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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIRST INSTALMENT OF "E/F" CLAIMS

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Glossary

Term	Definition
agreed value	The agreed value refers to the value ascribed to the interest insured under the contract of insurance. On the date of loss, the agreed value may be higher or lower than the actual value (e.g. market value or net book value) of the interest insured.
co-insurer	A co-insurer shares the insured risk with another insurer(s) by subscribing to a specified portion of the insured risk. In the event of loss, each co-insurer is severally liable for its own share of the loss as represented by its share of the insured risk.
deductible	A deductible is an amount specified in the insurance policy as the amount of the loss to be borne by the policyholder for its own account. The existence of a deductible effectively renders the policyholder a co-insurer with the insurance company in the amount of the deductible. For example, if a policy specifies a deductible of USD 1,000, the insurance company is only liable for that portion of the loss that exceeds USD 1,000.
export credit agency	An export credit agency is an entity (often governmental) which provides insurance in respect of losses arising out of export sales contracts. In general, an export credit agency covers the exporter against the risks of frustration of the contract and non-payment by the buyer, whether due to commercial or political risks.
reinsurance company	A reinsurance company insures the risks of insurance companies. Under a contract of reinsurance, the policyholder is an insurance company that passes on or "cedes" part or all of its risks to the reinsurer in consideration of a reinsurance premium. In the event of a claim against the ceding company, the latter may call upon the reinsurance company to pay in accordance with the contract of reinsurance.
retrocessionaire	A retrocessionaire insures the risks of a reinsurance company. Under a retrocession agreement, the policyholder is a reinsurance company that passes on or "cedes" its risks to the retrocessionaire in consideration of a premium. In the event of a claim against the reinsurance company, the latter may call upon the retrocessionaire to pay in accordance with the retrocession agreement.
syndicates at Lloyd's	Syndicates at Lloyd's are groupings of members of the Lloyd's insurance market who appoint a professional underwriter to accept risks on their behalf. Lloyd's itself is not an insurance company and does not accept risk in its own right.

Term	Definition
waiting period	A waiting period is a period specified in the contract of insurance on the expiry of which the insured risk is deemed to have materialised. In the case of a marine policy, for example, covering a vessel against the risk of loss by seizure or detention, it is common to specify a waiting period of 6 to 12 months. If the vessel continues to be seized or detained on the expiry of the waiting period, the policyholder may claim for, and be entitled to, an indemnity in respect of the loss of the vessel.

Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") constituted the present Panel of Commissioners (the "Panel"), by appointing Mr. Roberto MacLean (Chairman) and Mr. Rafael Vizcarrondo at its thirtieth session in December 1998 and Mr. Nigel Alington at its thirty-third session on 30 September 1999. The Panel was appointed to review claims filed with the Commission on behalf of insurers and export credit agencies (the "E/F Claims"), in accordance with the relevant Security Council resolutions and Governing Council decisions, including the Provisional Rules for Claims Procedure (the "Rules")(S/AC.26/1992/10).

2. The E/F Claims category originated from the fact that some insurers (the "claimants", more specifically defined in paragraph 31) filed their claims in category "F" (claims of Governments and international organisations). However, the majority of claimants filed their claims in category "E" (claims of corporations and other legal entities). Each claimant seeks compensation for amounts paid to policyholders for loss, damage or injury allegedly arising out of Iraq's invasion and occupation of Kuwait on 2 August 1990.

3. This report contains the Panel's recommendations to the Governing Council, pursuant to article 38(e) of the Rules, concerning the first instalment of E/F Claims consisting of 40 claims (the "first instalment claims"). These claims involve transhipment losses, losses arising out of the detention of a British Airways aircraft in Kuwait, export credit losses, loss of vessels, contract frustration losses, one loss due to the wrongful calling of a guarantee and other losses. These claims were grouped together in the first instalment in order to provide a multiplicity of issues for the Panel's determination in its first instalment.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

4. The role of the Commission is set out in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) (S/22559). In paragraph 20 of his report, the Secretary-General described the function of the Commission:

> "... The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element."

5. In processing the first instalment claims, the Panel was required to:

(a) determine whether the various types of losses alleged by claimants are within the Commission's jurisdiction (i.e., are eligible for compensation within the framework established by the Security Council);

(b) verify whether the alleged losses that are, in principle, eligible for compensation have in fact been incurred by a given claimant; and

(c) evaluate the appropriate measure of compensation for each type of compensable loss and the quantum of the compensable losses.

B. The procedural history of the claims

6. Before the first instalment claims were submitted to the Panel on 27 October 1999, the secretariat undertook a preliminary assessment of the claims in accordance with article 14 of the Rules, in order to determine if the claims met the formal requirements established by the Governing Council.

7. Thirty-one claims presented formal deficiencies. The secretariat issued notifications to the claimants concerned, pursuant to article 15 of the Rules, requesting that the defects be remedied. A number of the claimants responded, correcting those formal deficiencies.

8. The Executive Secretary's reports dated 23 July 1999 and 28 October 1999, issued in accordance with article 16 of the Rules, presented the significant legal and factual issues identified in the first instalment claims. The two article 16 reports were distributed to the Governing Council members, Governments that had filed claims and to the Government of Iraq. Pursuant to paragraph 3 of article 16, a number of Governments submitted their information and views on the article 16 reports. These responses were transmitted to the Panel pursuant to paragraph 1 of article 32 of the Rules.

9. By Procedural Order No. 1 dated 27 October 1999, the Panel gave notice of its intention to complete its review of the first instalment claims and to submit its report and recommendations to the Governing Council within twelve months, in accordance with article 38(c) of the Rules. This procedural order was transmitted to the claimants, through their Governments, and to the Government of Iraq. In view of the nature and complexity of the issues raised in the first instalment claims, the Panel classified the first instalment claims as unusually large or complex claims within the meaning of article 38(d) of the Rules.

10. In processing the first instalment claims, the Panel employed the full range of investigative procedures available to it under the Rules. Notification requests, pursuant to article 34 of the Rules ("article 34 notifications"), were sent to the claimants. I the case of one claimant, the Panel sent a procedural order requesting that the claimant provide further information and additional evidence.

11. The Panel also performed a thorough factual and legal analysis of the first instalment claims, in accordance with article 38 of the Rules. The Panel engaged expert consultants to assist in the verification and valuation of the first instalment claims.

II. LEGAL FRAMEWORK

A. Applicable law and criteria

12. The Commission's jurisdiction is founded on Security Council resolution 687 (1991). In paragraph 16 of this resolution, the Security Council:

> "Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."

13. Article 31 of the Rules provides that:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

B. Liability of Iraq

14. In adopting resolution 687 (1991), the Security Council acted under Chapter VII of the Charter of the United Nations, which permits the Council to exercise its powers under that Chapter to maintain or restore international peace and security. The Security Council also acted under Chapter VII in adopting resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Given these provisions, the Security Council has resolved the issue of Iraq's liability for losses falling within the Commission's jurisdiction. 1/

C. The requirement of directness

15. Governing Council decisions 7, 9 and 15 provide the Panel with guidance on how to interpret the requirement of resolution 687 (1991) that losses be direct losses resulting from Iraq's invasion and occupation of Kuwait.

16. Paragraph 21 of Governing Council decision 7 provides that compensation is payable:

"... with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure [of persons] from or [their] inability to leave Iraq or Kuwait [or a decision not to return] during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."

17. This is not an exhaustive list of what constitutes a direct loss. Paragraph 6 of Governing Council decision 15 states that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait".

18. Decision 9 relates to the three main types of loss within the category "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties. The first instalment claims relate primarily to the first two of those loss types.

19. A number of the first instalment claims relate to losses arising out of sales contracts with non-Iraqi parties. Paragraph 10 of decision 9 provides guidance concerning losses arising out of such contracts. In such cases,

"Iraq is responsible for the losses that have resulted from the invasion and occupation of Kuwait. A relevant consideration may be whether the contracting parties could resume the contract after the lifting of the embargo against Kuwait, and whether they have in fact resumed the contract. Iraq principally cannot be relieved from its responsibility by force majeure provisions of contracts to which it is not a party or contract excuse rules of other applicable laws."

20. A number of other first instalment claims relate to the loss of tangible assets, such as vessels. Paragraph 12 of Governing Council decision 9 refers to losses relating to tangible assets. It states that,

"[w]here direct losses were suffered as a result of Iraq's invasion and occupation of Kuwait with respect to tangible assets, Iraq is liable for compensation. Typical actions of this kind would have been expropriation, removal, theft or destruction of particular items of

property by Iraqi authorities. Whether the taking of property was lawful or not is not relevant for Iraq's liability if it did not provide for compensation." 2/

D. Jurisdictional limitations

21. The Governing Council has made a number of determinations concerning the non-compensability of certain types of losses. In this respect, the Panel also found guidance in the reports of other Panels, which have already been approved by the Governing Council.

1. "Arising prior to" clause

22. In paragraph 16 of Security Council resolution 687 (1991), the Security Council reaffirmed that Iraq was liable for any direct loss, damage or injury resulting from its invasion and occupation of Kuwait, "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms".

23. The "E2" Panel has provided an interpretation of the words "the debts and obligations of Iraq arising prior to 2 August 1990" in the context of construction and supply contracts and concluded that,

> "where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed"

are outside the jurisdiction of the Commission. 3/

24. The "E2" Panel defined performance as,

> "complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance." 4/

The "E2A" Panel further defined the meaning of performance for the purposes of the "arising prior to" clause in the context of supply contracts, specifically considering whether the trading terms of each sales contract are to be taken into account in order to define delivery, or whether it is sufficient to rely only on the date of shipment. The "E2A" Panel determined that,

> "shipment of the goods suffices to establish the date of performance, as it is generally the final step that must be performed by the seller in order to be entitled to payment under a sales contract." 5/

25. The Panel adopts the reasoning of the "E2" and "E2A" Panels' recommendations on these issues and finds that, in respect of contracts for the supply of goods or performance of services entered into with Iraqi entities, where shipment or performance occurred prior to 2 May 1990, the

Panel does not recommend for compensation any claims for payments owed for those goods or services.

2. The trade embargo

26. The Governing Council decided, in paragraph 24 of decision 7, paragraph 6 of decision 9 and paragraph 9 of decision 15, that a loss caused solely by the trade embargo and related measures, or the economic situation caused thereby, is not compensable.

27. However, these Governing Council decisions permit compensation to be awarded when the invasion and occupation are a separate and distinct cause of the loss, notwithstanding the existence of the trade embargo, and where the invasion and occupation and the trade embargo are found to be parallel causes of the loss. 6/

3. Military costs

28. Governing Council decision 19 provides that "the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". In its second instalment report, the "E2" Panel considered decision 19 and recommended that, inasmuch as no member of the Allied Coalition Forces could obtain compensation for the cost of military operations against Iraq, likewise no compensation ought to be awarded to entities that provided services to the Allied Coalition Forces. 7/ The Panel agrees with the finding of the "E2" Panel in this regard and finds that the costs of the preparation for, participation in, or provision of support in relation to, the activities of the Allied Coalition Forces and their military response to Iraq's invasion and occupation of Kuwait fall within the scope of Governing Council decision 19 and are therefore not eligible for compensation.

4. Supplements or amended claims

29. The Governing Council determined that after 1 January 1997, the Commission will not accept any category "E" claims for filing 8/ and that after 11 May 1998, the Commission will not admit any unsolicited supplements to previously filed claims in categories "E" and "F"9/, with the exception of environmental claims. Accordingly, the Panel finds that new claims submitted after 1 January 1997, either for new loss types or additional loss elements, are inadmissible as time barred. The Panel also finds that information or documentation submitted in response to article 34 notifications or procedural orders cannot increase the amount claimed.

E. Nationality of corporations

30. In the first instalment, the Panel was faced with a claim involving a claimant with part Iraqi shareholding. The Panel was guided by article 5(1)(b) of the Rules, which states that "[a] Government may submit claims on behalf of corporations or other entities that, on the date on which the claim

arose, were incorporated or organized under the law of that State." Accordingly, the Panel finds that a corporation which is incorporated or organised under the laws of a state other than Iraq is not an Iraqi entity and may claim before the Commission.

III. COMPENSABILITY OF INSURANCE AND EXPORT CREDIT CLAIMS

A. The underlying loss and the insurer's right of subrogation

31. The first instalment claims have been submitted by insurance companies, reinsurance companies, syndicates at Lloyd's and export credit agencies or their agents (the "claimants"), in respect of indemnity payments to policyholders for losses which allegedly resulted from Iraq's invasion and occupation of Kuwait. 10/ These claimants were involved in various stages of the chain of insurance, as primary insurers (including co-insurers), reinsurers or retrocessionaires.

32. The Panel considers that the compensability of insurance claims is also supported by Governing Council decision 7, which provides that compensation is available "to reimburse payments made or relief provided by corporations or other entities to others - for example, to employees, or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council." 11/

33. The Panel notes that the standing of insurers in the adjudication of claims involving international responsibility for a wrongful act is generally recognised under international law, as subrogees to their policyholders' rights. 12/ The insurance policy normally provides for the insurer's right of subrogation. However, not all policies under which the respective payments at issue in the first instalment claims were made expressly provided for the insurer's right of subrogation. The Panel noted the variations in the terms and conditions of policies issued by the various claimants. The Panel considered that the absence of an explicit subrogation provision in the policy does not, as such, prevent a claimant insurer from seeking compensation from the Commission, so long as the payment made by the claimant is a payment to others suffering compensable losses.

34. In applying the criteria set out in decision 7, the Panel finds that insurers, including co-insurers, are eligible in principle to claim compensation for losses that are otherwise compensable before the Commission. The Panel also considers that reinsurers and retrocessionaires are similarly eligible to claim compensation from the Commission, on the basis that the Panel recognises that they are contractually obligated to reimburse the primary insurer(s) or the reinsurers, respectively, for part or all of the insured loss. In all cases, as discussed more fully in paragraphs 84 to 89 below, the Panel has adhered to the requirement that there must be no multiple recovery. 13/

35. The Panel considers that, to be compensable within the meaning of Governing Council decision 7, payments by insurance entities for which

compensation is sought must satisfy two criteria. First, such payments must have been made in respect of underlying losses (i.e., direct losses suffered by policyholders) that resulted from Iraq's invasion and occupation of Kuwait. A claim for reimbursement of a payment made by an insurer under an insurance policy is eligible for compensation only in so far as the payment was made for a loss that would have been compensable by the Commission in the absence of insurance cover. If this test is not satisfied, the Panel considers that the claim is not compensable, regardless of whether the insurance entity was obligated to pay under the insurance or reinsurance policy.

36. The second test to be satisfied is that the underlying loss must have been compensable under the particular insurance policy, i.e., the claimant must have been obligated to pay its policyholder under the terms of the relevant policy. Payment, in and of itself, is not proof that the loss was covered under the policy. Thus, the Panel finds that where a payment was made by a claimant insurer ex gratia (where there was no obligation under the policy), or for reasons that were otherwise not a foreseeable result of Iraq's invasion and occupation of Kuwait, the claim is not compensable, notwithstanding the fact that the payment may have been made for a loss that is otherwise compensable by the Commission. For example, in one claim which the Panel recommends is not compensable, the claimant initially denied liability but settled the claim to avoid legal action, rather than because it considered itself obligated to pay under the policy. This second test also requires the claimants to submit sufficient evidence concerning the terms of the policy to show that the underlying loss was in fact covered.

B. Quantum of compensation

1. Valuation

37. For each claim where compensation was recommended, the Panel had to consider the quantum of compensation to be awarded to the claimants. As stated above, all the first instalment claims relate to payments which claimant insurers made under insurance policies. These payments, however, did not necessarily reflect the actual value of the underlying loss suffered by each policyholder. Most marine policies issued in respect of claims in the first instalment were issued under English law, and were "valued policies", i.e., policies under which the value of an insured vessel is fixed and is payable in the case of a total loss, regardless of the actual value of the vessel on the date of loss 14/ (more details are provided in paragraphs 38, 40, 162 and 163).

38. Likewise, goods are often insured for 110 per cent of their cost, insurance and freight ("CIF") value. In the case of goods allegedly lost, looted or destroyed at Kuwaiti air or sea ports, claimant insurers typically paid the policyholders the value of the goods as uplifted in accordance with the terms of the policies. Claimants putting forward claims for loss of vessels, as well as claims for losses involving goods, sought compensation

for the amounts paid to their policyholders, which were based on the agreed value (in the cases of vessels and aircraft) or the value of the loss as contractually agreed (in the case of loss of goods), rather than the actual losses suffered by the policyholders.

39. The Panel recommends awards of compensation to claimants for the actual value of the underlying loss suffered by a claimant's policyholder, rather than the agreed or contractually defined value of the asset lost. The insurer's total loss may, however, exceed the value of the insured asset, as the policy may also cover other charges or expenses incurred by the policyholder as a direct result of Iraq's invasion and occupation of Kuwait. The Panel considers that Iraq should not be liable to pay compensation greater than the total loss actually suffered by the policyholder. To find otherwise would be to bind Iraq to terms of contracts to which it was not a party.

40. The Panel considered other bases of valuation apart from insured value. It considered book value, i.e., the value at which the asset is carried in the balance sheet, being the historical cost of the asset minus accumulated depreciation. This valuation however is designed to enable the company to recover the original cost, rather than to reflect the cost of replacing the asset. Also, the rate of depreciation may not reflect the true useful life of the asset and thus overstate or understate its worth. The Panel also considered replacement value, i.e., the cost of purchasing a new equivalent item. In most cases however such a basis would have given claimants a windfall profit, as the cost of a new item would have significantly exceeded the market value of the asset that was lost or destroyed. The Panel concluded therefore that market value, i.e., the price at which buyers and sellers trade similar items in the open market, was the appropriate basis of valuation for vessels and aircraft. This accords with international legal practice, e.g., in Admiralty courts.

41. In one claim, however, the market value of a vessel at the date of loss was actually higher than the insured value. In this case, the Panel recommends that the claimant insurer be awarded no greater compensation than the amount that it paid its policyholder. Accordingly, the Panel finds that the claimant may receive compensation for no more than the insured value that it actually paid.

42. In respect of all claims for the loss of vessels and aircraft, the Panel retained expert consultants to assess the market value of each vessel or aircraft on the date of its loss.

43. In respect of claims for the loss of goods, the Panel recommends awards of compensation based on the actual value of the lost consignment, which is normally the invoice value, not the contractually uplifted value. In addition, however, the Panel was also guided by a general principle formulated by the "E2A" Panel that, in the case of claims for the non-payment for delivered goods, "[t]he measure of compensation should normally be

adequate to restore the claimant-seller to the same position as if the contract had been performed". 15/ Accordingly, as the contract price in international sale of goods transactions often includes the cost of the insurance premium, the Panel finds that the premium is part of the underlying loss and is, therefore, compensable.

2. Date of underlying loss

44. The assessment of quantum also required the Panel to determine the date on which the actual loss occurred (the "date of underlying loss"). This date is not always the date of loss defined in the policy. For example, the Panel noted that with respect to the loss of vessels by seizure or detention, the date of loss is often defined in the policy by reference to the expiry of a specified period of time. This "waiting period" typically ranges from 6 to 12 months. The agreed value is payable at the end of the waiting period when loss of the vessel, for example due to seizure, is deemed to have occurred under the policy. For the purposes of awarding compensation, the Panel's recommendation is to compensate the market value of the vessel on the date of its actual loss, that is the date on which the craft was actually seized, captured (even if not destroyed until a later date) or destroyed as a direct result of Iraq's invasion and occupation of Kuwait, not the date of the expiry of the particular waiting period. In reaching this conclusion, the Panel considered that Iraq ought not benefit, or suffer, from fluctuations in market values resulting from the application of a term of a policy to which it was not a party. The date of underlying loss should be contrasted with the date of compensable loss (see paragraphs 90 to 94).

3. Uninsured amounts

45. The Panel also examined the instances in which insurance policies do not cover the entire amount of an insured loss. Sometimes the policyholder remains responsible for a certain percentage, say 10 per cent, of each loss (the "uninsured percentage"). Alternatively, the insurer may not become liable for a loss until its amount exceeds a certain value. In this case the uninsured amount is known as the "excess" or "deductible". In all such circumstances the policyholder effectively becomes a co-insurer. The claimant insurers in this first instalment have not sought compensation for such uninsured amounts on behalf of the policyholder. In some, but not all, of the claims the policyholder has claimed separately for the uninsured portion. The Panel considers that compensation to the insurer claimant should be limited not only to the amount of the actual underlying loss, but also to the amount or proportion of the loss for which that claimant is liable under the policy.

46. Accordingly, the Panel was required to consider how to take account of the uninsured portion when its recommended basis of valuation produced an amount that was less than the amount paid by the insurer to its policyholder. In these cases the Panel considered that compensation should be based upon the insured percentage of the recommended valuation where an uninsured

percentage applied and that the full amount of any "excess" should be deducted from the recommended value where an excess or deductible applied.

4. Premiums

47. The Panel considered whether insurance claims should be reduced by part or all of the insurance premiums that the insurer had received in return for assuming the risks covered by the policy.

48. The Panel notes that, in general, the amount of an insurance premium is very small in relation to the total amount of risk assumed by insurers under the policy for which the premium is paid. In turn, only a small proportion of the premium paid by the policyholders concerned in the first instalment claims represented the perceived risk of Iraq's invasion and occupation of Kuwait. Apart from the element of premium that the insurer expected to retain or distribute as profit, a significant portion of the premium represented the cost to the insurer of providing its services, being underwriting expenses and overheads.

49. Moreover, in all cases the policies covered risks other than simply that of Iraq's invasion and occupation of Kuwait. For example, the policies covering vessels generally insured all of the conventional marine perils to which vessels are exposed, and the export credit policies covering the supply of goods provided insurance against non-payment by the buyer for many reasons, including the buyer's insolvency.

50. In addition, those policies covered many more interests (e.g. assets such as aircraft or liabilities to employees) than simply the particular interest that gave rise to a claim as the result of Iraq's invasion and occupation of Kuwait. For example, the British Airways policy under which a claim was paid for the loss of the aircraft involved in flight 149 covered British Airways' entire fleet of aircraft.

51. The Panel also notes that it is not possible to assume that the risk element of the total premium received by an insurer is the same as the amount of the claims paid by the insurer. Many insurers subsidise the claims payments from investment income. The value of the insurance premium received by insurers under policies concerned in the first instalment claims cannot be disassociated from the investment performance of the insurer.

52. In these circumstances, the Panel considers that, given the variety of insurance policies involved in the first instalment claims, and of the risks and interests covered thereunder, it is not possible to formulate a general principle for the deduction of premiums that could be accurately applied in all cases. The Panel will not, therefore, recommend the deduction of premiums.

C. Incidental losses

53. The Panel notes that the claimants, in their capacity as insurers, may have incurred costs specifically as a result of handling claims for losses arising from Iraq's invasion and occupation of Kuwait. These losses are in addition to the underlying loss. The Panel considers that these may be compensable in some limited circumstances. To be compensable, however, such losses must have been direct losses resulting from Iraq's invasion and occupation of Kuwait. In addition, those losses must have had a sufficient connection with the underlying loss, being incurred in mitigation of the underlying loss. In all cases, the Panel considers that the incidental losses must have been necessarily and reasonably incurred to be compensable.

54. In addition, insurers may have incurred legal and other professional fees in defending claims, either by policyholders against the insurers (in seeking payments under insurance policies) or against policyholders by employees or third parties. In some cases insurers may also have incurred costs in prosecuting claims against third parties, on behalf of policyholders, in order to pursue recoveries. The Panel considers that these expenses may be eligible for compensation if they were incurred in mitigation of the amounts payable in respect of the underlying loss (see, for example, paragraph 199 below). The Panel considers that expenses incurred by insurers in defending claims from policyholders are not in principle eligible for compensation.

55. To illustrate this principle, the Panel refers to incidental losses resulting from the common practice of insurers engaging loss adjusters to investigate claims. Loss adjusters typically report to insurers on the circumstances of the claim, whether it arises from a risk covered by the policy and if so, the amount of the loss with reference to the amount recoverable under the policy. In these cases, the insurer, not the policyholder, is liable to pay the loss adjusters' fees.

56. In such circumstances, the Panel recommends that loss adjusters' fees are not compensable, as incurring these fees is not a direct result of Iraq's invasion and occupation of Kuwait, but rather a consequence of the insurance relationship, as they are incurred by an insurer in the investigation of a policyholder's claim regardless of the cause of the claim.

IV. EVIDENTIARY REQUIREMENTS

57. Article 35(1) of the Rules provides that:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

58. Pursuant to article 35(3) of the Rules, claims of corporations and other entities must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss.

59. All claimants in the first instalment submitted their claims under the category "E" claim form. The "E" form required all corporations and other legal entities that filed claims to submit with their claim forms "a separate statement explaining their claim ('statement of claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". Claimants were instructed to include in the statement of claim the following particulars:

(a) the date, type and basis of the Commission's jurisdiction for each element of loss;

(b) the facts supporting the claim;

(c) the legal basis for each element of the claim;

(d) the amount of compensation sought, and an explanation of how this amount was calculated.

D. General observations

60. In applying the procedural requirements mentioned above and the evidentiary standard discussed in detail later in this report, the Panel carefully examined the statements of claim and the evidence submitted by the claimants as well as the responses to article 34 notifications and a procedural order. The Panel found that certain claims, or parts thereof, failed to meet the Commission's evidentiary standard or the directness requirement of Security Council resolution 687 (1991). The Panel recommends that compensation not be awarded for all or part of those claims.

61. With respect to the loss elements which the Panel considered compensable in principle, the Panel first verified that the losses had, in fact, been incurred. The Panel then evaluated those losses, bearing in mind the overall requirement that the amounts claimed be reasonable in the circumstances and that the claimant should have taken reasonable steps in mitigation.

62. Pursuant to paragraph 1 of article 35, it is for the Panel to decide "the admissibility, relevance, materiality and weight of any documents and other evidence submitted". The Panel's decision as to what constitutes appropriate evidence depends on the nature of the claim.

63. In many of the first instalment claims, the evidence established the occurrence of a loss, but was insufficient to demonstrate with a reasonable degree of certainty the amount of that loss. In those claims, the Panel exercised its discretion to assess the amount of recommended compensation. The Panel received advice from its expert consultants and considered the type

and quality of evidence that should reasonably be required of a claimant, given the circumstances prevailing at the time of the losses, particularly in Iraq and Kuwait.

E. Specific observations

1. Types of evidence

64. In many of the first instalment claims, the claimants failed to provide sufficient evidence to demonstrate the circumstances and the amount of the claimed loss (see paragraph 58), notwithstanding that some of the claimants provided voluminous documentation.

65. Some claimants asserted that they were unable to produce evidence because of the time that had elapsed since the relevant events, or because of the loss or destruction of documentary evidence. The Panel does not consider the passage of time or the destruction of a claimant's records in the interim to be acceptable reasons for releasing a claimant from its burden to produce sufficient evidence to substantiate its claim. A claimant has a duty to preserve all documents that may be relevant to the determination of a pending claim.

66. Nevertheless, the Panel accepted that, in view of the prevailing circumstances in Kuwait at the time of Iraq's invasion and occupation of Kuwait, claimants may not always have been able to produce all the evidence that would have otherwise been available. Where it was Iraq's invasion and occupation of Kuwait that made it impossible for a claimant to submit the primary evidence, the Panel took into account other supporting evidence of the loss.

67. The Panel did however require claimants to provide evidence of insurance cover and evidence of payment by a claimant to a policyholder, in view of the fact that insurers were not subject to the exigencies of a war zone that lead, in some cases, to the destruction of documents.

2. Specific evidentiary requirements

68. The Panel recommends an award only for those claims which contained sufficient evidence of the following:

(a) the claimant's eligibility to make the claim and/or authority to make the claim on behalf of others;

(b) the existence of the underlying subject matter prior to the invasion;

(c) the occurrence of the underlying loss and the occurrence of costs in mitigation;

(d) evidence that the loss was a direct loss resulting from Iraq's invasion and occupation of Kuwait;

(e) evidence of insurance cover, including war risks, at the date of the loss;

(f) evidence that the policyholder and the insurer complied with the terms of the insurance policy and, in particular, that the insurer properly paid the policyholder in accordance with the terms of the policy; and

(g) evidence that payment was received by the policyholder (or other beneficiary) from the insurer, or, where relevant, by an insurer from a reinsurer.

69. Many of the first instalment claims contained evidence that fell short of these evidentiary requirements in some manner. Accordingly, the Panel was required to consider whether the evidentiary shortcomings were so severe as to result in a recommendation of no compensation or whether the compensation should be subject to an adjustment to the claimed amount.

70. The Panel finds that where a claim contained insufficient evidence linking the loss directly to Iraq's invasion and occupation of Kuwait, the Panel would not recommend compensation for that claim.

71. In some claims, for example, the claimants could have engaged loss adjusters to survey sea and air ports to ascertain the circumstances of the fate of lost goods. Where a claimant could have provided evidence to the Commission of the circumstances of an underlying loss and has failed to do so, the Panel recommends that the claim fails for lack of evidence of causation.

72. For the purposes of identifying the evidentiary shortcomings for which the Panel merely recommends adjustments, the Panel adopts the approach approved by the Governing Council 16/ in relation to the recommendations of the "E4" Panel. That Panel considered claims which were otherwise compensable (i.e., they were for direct losses) but with evidentiary shortcomings which prevented their precise quantification. In such claims, the "E4" Panel said that there is a risk that the claims may be overstated. 17/ The "E4" Panel balanced the claimant's inability always to provide the best evidence against the "risk of overstatement" introduced by shortcomings in evidence. 18/

73. The "E4" Panel recommended that,

> "[i]f the evidence supports the claimed loss and does not present a "risk of overstatement", then the claimed loss is approved by the ["E4"] Panel without adjustment. If instead the need for actual adjustments is identified, then these adjustments are applied by the Panel..." 19/

The adjustments offset the "risk of overstatement" identified. 20/

74. Accordingly, this Panel recommends the application of adjustments to awards of compensation to the first instalment claims, to take account of

evidentiary deficiencies in claims which are in principle compensable and where losses have in fact been incurred.

75. Other examples of claims where the Panel recommends adjustments relate to the type of evidence submitted for payment by an insurer to a policyholder. The best evidence of payment would be proof of receipt of payment by the policyholder, in the form of an acknowledgement of receipt signed by the policyholder or a cheque stamped by the policyholder's bank. In one of the first instalment claims, the only evidence of payment was an unstamped credit note from the broker. The Panel recommends that such a claim be subject to an adjustment, rather than being subject to a recommendation of no compensation, where all other requirements of compensability are met.

76. Other evidentiary shortcomings for which the Panel applied adjustments relate, for example, to the completeness of a policy, whether a policy was current at the date of the underlying loss, how a loss was evaluated, evidence of the sales contract (where the underlying loss was the loss of a payment due from a buyer) and compliance with the terms of a policy. For the reasons set out in paragraphs 37 to 43 above, the Panel applied the adjustments to the value of the underlying loss, rather than to the claimed amount.

77. In addition to the evidentiary requirements set out above, the Panel occasionally required specific evidence depending on the nature of the claim. These additional requirements are set out in Chapter VIII of this report describing specific categories of claims.

78. In examining the circumstances of the underlying loss, the Panel took note of evidence contained in any related claim files.

V. MITIGATION

A. General duty of mitigation

79. The Panel considers that insurers, as any other claimants before the Commission, are under a duty to take all reasonable steps to mitigate their losses. In decision 9, the Governing Council has established that "[t]he total amount of compensable losses will be reduced to the extent that those losses could reasonably have been avoided." 21/ Several panels of Commissioners have considered the scope of the duty to mitigate in regard to specific losses. The "E2" Panel, for example, considered in its first report that, while the duty to mitigate requires a claimant to do "no more than was reasonable under the circumstances" 22/, an award for compensation should be reduced, when a loss could reasonably have been avoided, to the extent that reasonable measures to avoid or reduce the loss had not been taken. 23/ As another example, the "E1" Panel recommended no compensation for a portion of storage and maintenance costs claimed, on the basis that the claimant seller had not taken timely steps to reduce or diminish the loss by reselling the goods. 24/

B. Application to claims

80. In respect of claims for loss of goods in transit, for example, some policyholders communicated with Kuwait Airways Corporation ("KAC"), the carrier with respect to a large number of transhipment losses. In a few claims, policyholders attempted to sue KAC for loss of the goods. Most claimants, however, provided evidence that KAC had acknowledged the loss of the goods and had invoked article 20 25/ of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, as amended by the Hague Protocol of 1955, (the "Warsaw Convention"), relying on the defence of force majeure in denying liability for the loss. The Panel considers that claimants that did not take legal action against KAC, but merely produced the standard denial of liability letter issued by KAC, were under no further duty to mitigate their losses since it is likely that legal action against KAC would have been unsuccessful.

81. The Panel considers that, in respect of goods shipped to Kuwait or Iraq prior to 2 August 1990 and still en route on that date, it was reasonable to divert the carrying vessel to a neighbouring port in mitigation of the loss. Thus, additional freight and insurance charges resulting from such diversion, additional custom duties at the new destination and costs of storage of the goods pending their resale or return to the seller, where proved, are all compensable, provided that they were reasonably incurred in mitigation of the loss. This approach has been adopted by other panels of Commissioners. 26/

82. Likewise, where goods were diverted and resold, the Panel recommends that losses arising out of the resale are in principle compensable in the amount of the difference between the original contract price and the resale proceeds, minus any costs saved and plus the costs of resale. The Panel considers that costs associated with resale are in principle costs incurred in mitigation of a loss.

83. One claimant in the first instalment claimed for amounts paid by way of salvage awards. The Panel recommends compensation of such awards on the basis that they are expenses incurred in mitigation of the loss. On the other hand, one claim in respect of the loss of a vessel included amounts claimed for items such as ship's insurance, permanent registration fees and spare parts. The Panel finds that such items represent the normal running expenses of a vessel for which the owners or charterers would be liable in any event rather than costs incurred in mitigation of a loss, and therefore recommends no compensation.

VI. AVOIDANCE OF MULTIPLE RECOVERY

84. The Commission will not award compensation for the same loss more than once. In paragraph 25 of decision 7, the Governing Council provided that "any compensation ... already received from any source will be deducted from

the total amount of losses suffered". In paragraph 3(b) of decision 13, the Governing Council stated that,

> "[w]hen the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories "C", "D", "E" and "F" has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss."

All claimants are required to notify the Commission of any compensation received for the same loss, both at the time of submitting the claim 27/ and as an ongoing requirement. 28/

85. There are two ways in which the Panel has sought to avoid awarding compensation for the same loss more than once. Firstly, the Panel has considered that claimants may have recovered compensation in another forum or from another source. Secondly, the Panel considered whether there were any claims in which the same loss was claimed by more than one claimant before the Commission.

86. Where a claimant had already received compensation in another forum or from another source for the same loss as that claimed in the first instalment, the Panel deducted the amount already received by the claimant from the amount of its recommended award.

87. In the second case, the Panel instructed the secretariat to review the other claims to ensure that none of the claims were for the same losses. Where the Commission had already recommended awards of compensation for claims for the same losses as those claimed in the first instalment claims, the Panel deducted the amount already recommended from the amount of the Panel's recommended award.

88. In respect of some of the claims relating to transhipment losses, where the policyholder was the supplier, there was evidence that both the claimant and the buyers had paid the policyholders for the loss of the goods, notwithstanding that the buyers did not receive the goods. While the policyholders may have paid the insurance proceeds to the buyers, the claimants did not always provide any evidence that they had done so. In the absence of sufficient explanation for the double recovery by the policyholder, the Panel considers that the underlying loss had been extinguished by the policyholder's receipt of the purchase price from the buyer and therefore claims for these amounts are not compensable.

89. Some of the claims relating to the loss of vessels and the loss of aircraft also included claims for amounts paid to crew-members or passengers. Where the crew-members or passengers had filed claims with the Commission and been compensated for the same losses, the Panel deducted the amount of compensation previously awarded from any compensation it recommended in relation to these claims.

VII. INCIDENTAL ISSUES

A. Date of compensable loss

90. The Panel is required to determine the date of loss for the purposes of calculating interest and establishing the appropriate exchange rates to be used (the "date of compensable loss"). The date of loss for this purpose is not the same as the date of loss that the Panel has recommended for the purpose of calculating the quantum of compensation (see paragraph 44). In the context of the first instalment claims, the date of compensable loss for the purposes of the interest and exchange rate calculations can mean any one of the following three dates:

(a) The date on which the actual loss occurred. For example, in the case of a vessel seized by Iraqi troops on 10 August 1990, the date of loss would be 10 August 1990;

(b) The date of loss as defined in the policy. As stated in paragraph 44 marine insurance policies usually provide for the expiry of a "waiting period" before loss due to seizure, for example, is deemed to have occurred. Thus, in the case of the vessel referred to in (a) above, if the waiting period was 12 months, the date of loss for insurance purposes would be 9 August 1991; and

(c) The date of loss for the claimant insurer, i.e., the date on which the insurer indemnified the policyholder for the underlying loss.

91. As mentioned earlier, all first instalment claims were submitted by insurers, reinsurers, export credit agencies or their agents, for payments made to policyholders. Accordingly, for the purpose of determining interest to be paid on awards to claimants, the Panel recommends that interest be calculated from the date of payment where proved by the claimant to its policyholder. This is the date of loss for the claimant, i.e., the date that it was deprived of the use of the monies which it paid to the policyholder. The only exception to this is in cases where the insurer has paid prior to the expiry of the waiting period, in which case the date of compensable loss should be the date of the expiry of the waiting period. The Panel considers that Iraq ought not be liable for an insurer having paid its policyholder prior to becoming required to do so under the policy.

92. In many of the claims, the claimants did not submit evidence to establish conclusively the date of compensable loss. For example, some claimants submitted copies of cheques that they sent to policyholders in payment of the policyholders' claims. Each cheque was marked with the date on which it was drawn by the payer. However, often the claimants did not provide copies of the cheques bearing the dates that they were presented and paid to the payee. That date is the date of actual loss to the claimant, i.e., the date that the claimant's account was drawn down in the amount of the cheque. Accordingly, the Panel recommends that where there is evidence of payment to the policyholder, but not of the date of the receipt of

payment, the date of compensable loss should be the date 120 days after the date on which the claimant insurer drew the cheque or, if that date is not known, 120 days after the date on which the claimant dispatched the cheque to the policyholder.

93. In cases where payment to a policyholder was made by electronic transfer, and where there is evidence that the claimant's account was debited, the Panel recommends that the date of compensable loss should be the date on which the account was debited. In the absence of that evidence, the Panel recommends that the date of compensable loss should be the third day after the date on which instructions to transfer were given.

94. Where there is no other evidence of the date of payment, but there is verifiable evidence of the date of receipt of payment, the Panel recommends that the latter be deemed the date of compensable loss.

B. Currency exchange rate

95. The Panel notes that some of the claimants submitted claims in currencies other than United States dollars. The Panel assessed all such claims and performed all claim calculations in the original currencies of the claims. Since the Commission issues its awards in United States dollars, the Panel is required to determine the appropriate rate of exchange to be applied to claims where the losses were stated in other currencies.

96. The Panel notes that all prior Commission awards have relied on the United Nations Monthly Bulletin of Statistics for determining exchange rates into United States dollars. The Panel adopts that approach for this report. Accordingly, the Panel recommends that the appropriate exchange rate to be applied to the claims in the first instalment in currencies other than United States dollars should be the rate prevailing on the date of compensable loss, as outlined in paragraphs 90 to 94.

C. Interest

97. Governing Council decision 16 states that,

> "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award."

The Governing Council also stated that it would consider the method of calculation and of payment of interest at a later date and that "[i]nterest will be paid after the principal amount of awards." The Panel, therefore, makes no recommendation for the payment of interest.

98. The Panel is, however, required to determine the date from which interest is to run for the first instalment claims. For this purpose the Panel recommends the date of compensable loss, as defined in paragraphs 90 to 94.

D. Claim preparation costs

99. The Executive Secretary of the Commission has informed the Panel that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel makes no recommendation with respect to claims for these costs.

VIII. THE CLAIMS

A. Factual background

100. The effects of Iraq's invasion and occupation of Kuwait are well documented in United Nations reports and in other Panel reports. 29/ The "E2A" Panel observed that,

> "[w]ithin hours of entering Kuwait, Iraqi forces seized control of the country, closing all ports and the airport, imposing a curfew, and cutting off the country's international communications links. Access to Kuwait by the sea was prevented by the laying of mines in its offshore waters. From the outset, a programme of detention and violence is reported to have been implemented in order to discourage resistance. In the months following Iraq's invasion, at least 50 per cent of Kuwaiti nationals and over 90 per cent of the expatriate population left Kuwait ... Following the invasion, Iraq announced the formal annexation of Kuwait ... Virtually all commercial complexes of the country were looted. The widespread destruction of property by Iraqi forces and the breakdown of civil order in Kuwait are reported to have affected nearly every sector of the Kuwaiti economy." 30/

101. The Panel adopts the findings of the "E2A" Panel 31/ that there were military operations and a breakdown in civil order in Kuwait during Iraq's occupation. The Panel finds that these were a result of Iraq's invasion and occupation of Kuwait within the meaning of paragraph 21 of Governing Council decision 7.

102. Against this background, the claimants have asserted claims that relate to four distinct categories of underlying losses. The first are those arising out of contractual losses, such as financial losses sustained in connection with contracts for the sale of goods or contracts for construction work in Kuwait or Iraq. The second relates to the loss of tangible property during Iraq's invasion and occupation of Kuwait. Tangible property losses include the loss of vessels and the loss of aircraft. The third relates to losses sustained by policyholders arising from their legal liabilities. The fourth relates to payments in respect of the occurrence of events, such as kidnap, ransom, detention or injuries occasioned to individuals.

B. Contract related losses

103. Many of the first instalment claims relate to contractual losses that arose in relation to contracts for the sale of goods and contracts for

certain works to be performed in Iraq or Kuwait. In relation to the contracts for the sale of goods, the claimants paid indemnities either under policies covering transhipment losses or under policies covering export credit losses.

1. Transhipment losses

(a) Summary of the relevant facts

104. Eighteen of the first instalment claims relate to underlying losses of goods. The losses were said to have occurred in Kuwait while the goods were awaiting transhipment to buyers in other countries, or while the goods were in Kuwait but undelivered to Kuwaiti buyers, or while the goods were en route to Kuwait and had to be diverted.

105. A number of those claims relate to goods allegedly looted or destroyed while located in a cargo storage area at Kuwait Airport. Typically, such goods were awaiting continuation of carriage on Kuwait Airways connecting flights. In some cases, the goods were not specifically looted or destroyed but were alleged to have been lost amid the civil disorder that occurred for a considerable period of time during Iraq's occupation of Kuwait. In every such claim, the claimants allege that the goods were lost or destroyed in Kuwait at the time of Iraq's invasion and occupation and were never delivered to the intended buyers in Kuwait or other countries.

106. Two claimants are Indian companies that insured Indian exporters in respect of consignments of goods to overseas buyers. These claimants submitted claims involving numerous separate claims or sub-claims, each involving similar policies. The claimants sought compensation for payments made to their policyholders in respect of goods allegedly lost or damaged while awaiting transhipment at the time of Iraq's invasion of Kuwait on 2 August 1990. The goods had been transported to Kuwait Airport by Kuwait Airways. The policies purported to cover war risks in terms of the Institute War Clauses and the Institute Cargo Clauses (War) applicable to air cargo. The claimants allege that this insurance covered goods in transit for a period of 15 days after the day of arrival of the aircraft at any intermediate stopover. The consignments were all on their way to buyers in Western Europe. None of the consignments that are the subject of the claims were ever delivered to the buyers. In most cases, the sellers alleged that the buyers had not paid for the consignments. There was, however, evidence of payment by the buyers in some cases.

107. Two claims involve goods consigned on British Airways flight 149 ("Flight 149") and sent by United States sellers to Indian and Malaysian buyers, respectively. Flight 149 was detained in Kuwait at the time of Iraq's invasion. The claimants allege that the goods on board were never recovered.

108. One sub-claim relates to a consignment of edible goods sent by the policyholder to a Kuwaiti buyer. The claimant alleges that the goods were

offloaded in Dubai, due to Iraq's invasion and occupation of Kuwait, and later returned to the seller and destroyed. The claimant stated that it did not pay the policyholder for the loss of the goods. Nevertheless, the claimant has sought compensation from the Commission for legal fees and surveyors' fees incurred in connection with the policyholder's claim. The Panel recommends that the claimant's costs of denying a claim are not compensable, as they are not direct losses resulting from Iraq's invasion and occupation of Kuwait.

109. Another sub-claim relates to the loss of goods sent from Hong Kong to a Kuwaiti buyer. The goods allegedly arrived in Kuwait, but there was no evidence that the buyer received the goods. The buyer's shop was closed after the invasion and did not appear to have reopened. The Panel recommends no compensation for this claim, as there was no evidence that the loss was a direct loss caused by Iraq's invasion and occupation of Kuwait.

110. One claim involves goods sent by sea from Spain to a buyer in Kuwait. The claimant alleges that its policyholder, the Spanish seller, was never paid for the goods, which were presumed to have been lost or destroyed during Iraq's invasion and occupation of Kuwait. The Panel does not recommend compensation for this claim, as there was insufficient evidence to establish that the claimant had standing to submit the claim to the Commission.

(b) Specific evidentiary requirements

111. In respect of transhipment claims, the Panel adopts the "E2A" Panel's evidentiary requirements in relation to goods lost or destroyed in transit. 32/ A claimant must provide evidence of shipment of the goods, in the form of transportation documents such as a bill of lading or airway bill. This evidence must also allow the Panel to estimate the arrival date of the goods, in order to determine whether an inference could be drawn that their loss was a likely result of Iraq's invasion and occupation of Kuwait. The Panel also required evidence of the value of the goods, in the form of an invoice, contract or purchase order referring to the invoice value of goods.

112. In the claims where the policyholder was the supplier and had been paid by the consignee as well as by the claimant (see paragraph 88), the Panel required evidence that the proceeds of the insurance claim had been forwarded by the policyholder to the consignee or had been paid directly to the consignee by the claimant. Conversely, where the policyholder was the consignee, the Panel required evidence that it had paid the supplier for the goods which it had not received.

(c) Analysis and recommendations

113. The Panel finds that the totality of the evidence submitted by the claimants (in the form of surveyors' and loss adjusters' reports) established that the transhipment warehouses at air and sea ports in Kuwait were completely destroyed as a direct consequence of Iraq's invasion and occupation of Kuwait. Iraqi troops had control of Kuwait Airport at all

relevant times. Accordingly, the Panel finds that the consignments stored in such locations were destroyed or looted as a direct result of Iraq's invasion and occupation of Kuwait. The Panel, therefore, considers that, in accordance with the provisions of paragraph 21 of Governing Council decision 7, claims for losses relating to such goods are compensable in principle.

114. The Panel notes that, in considering the compensability of transhipment losses, it has been greatly assisted by the "E2" and "E2A" Panels, which have already reviewed a number of instalments of claims for contractual losses. The Panel follows the recommendations of the "E2" and "E2A" Panels that have been adopted by the Governing Council.

115. The Panel is aware that in some cases, in accordance with the terms of the contracts, the title to, as well as the risk of, the goods may have already passed to the buyer. However, following a principle enunciated by the "E2A" Panel, the Panel considers that a claim for compensation by a claimant insurer, stepping into the shoes of the seller, may be maintained regardless of whether the property in the goods has passed to the buyer, without prejudice to the general principle of avoiding double recovery for the same loss. 33/

116. The Panel notes that the claimants' policyholders who operated outside Kuwait were often only able to provide evidence that their goods arrived in Kuwait before the invasion and that they could not trace those goods after 2 August 1990.

117. In this respect, the Panel also adopts the "E2A" Panel's recommendation in relation to non-perishable goods. The "E2A" Panel stated that,

> "the further away the arrival date [of the goods in Kuwait] is from the date of Iraq's invasion of Kuwait, the greater the possibility that the goods were collected by the buyer." 34/

The "E2A" Panel recommended that where non-perishable goods arrived at a Kuwaiti seaport on or after 2 July 1990 or at Kuwait Airport on or after 17 July 1990 and could not thereafter be located by the claimant, an inference could be made that the goods were lost or destroyed as a direct result of Iraq's invasion and occupation of Kuwait and the ensuing breakdown in civil order. 35/ Accordingly, there can be no such inference in respect of losses of consignments that arrived at a Kuwaiti seaport before 2 July 1990 or at Kuwait Airport before 17 July 1990. These losses are not compensable, without sufficient further evidence that they were a direct result of Iraq's invasion and occupation of Kuwait.

118. In relation to perishable goods, the "E2A" Panel concluded that further evidence of the fact that the goods were not delivered to the buyer or that they were lost during Iraq's invasion and occupation of Kuwait may be required. This finding was based on the likelihood that these types of goods would have been promptly delivered to, or collected by, the buyer. 36/ The Panel adopts this finding.

119. In some of the claims, the claimants submitted evidence that the buyers had paid the policyholders for goods in accordance with their contracts, notwithstanding that those goods had been lost or destroyed at Kuwait Airport. In such circumstances the Panel required further evidence to show that the proceeds of the insurance claim had been paid to those buyers. In the absence of such evidence the Panel finds that, while the loss of the goods is in principle compensable, the underlying losses were extinguished by the policyholder's receipt of the purchase price from the buyer. Certain of the claimants provided no evidence to the contrary, despite article 34 notifications and in one case a procedural order.

(d) Basis of valuation

120. In the case of transhipment losses of goods, the Panel recommends awards of compensation based on the value of the lost consignment (see paragraph 43).

121. The Panel therefore determined the value of the lost consignment by reference to the invoice value of the goods with the addition, in the case of C&F contracts, of the freight and handling charges together with, in the case of CIF contracts, the insurance premium in respect of those goods.

2. Export credit losses

(a) Summary of the relevant facts

122. In three of the first instalment claims, the claimants sought compensation for payments made to their policyholders under export credit policies. The Panel notes that export credit policies do not generally cover the loss of goods themselves, but rather losses relating to the costs incurred in, or amounts due from, the performance of export sale contracts.

123. Each claim contained numerous sub-claims. The first group of sub-claims relates to export contracts where Kuwaiti buyers allegedly did not receive the goods. The goods were shipped to Kuwait and were said to have arrived there shortly before the invasion. Some of the sub-claims in this category involve the buyer's failure to pay following a variation in payment terms or the buyer's failure to comply with payment terms requiring payment prior to delivery of the goods. Three sub-claims involve goods allegedly looted by Iraqi troops while awaiting customs clearance.

124. The second group of sub-claims involves goods received by the buyers but for which they failed to pay, citing reasons ranging from the allegation that the goods had been looted by Iraqi troops while in the buyer's possession to an assertion of short delivery.

125. The third group of sub-claims involves the diversion and, generally, the resale of goods either en route or ready for shipment to Kuwait at the time of Iraq's invasion or the interruption of contracts for the sale of goods scheduled for shipment shortly after 2 August 1990. Goods en route to

Kuwait were diverted to other ports where they were stored before being disposed of or returned to the sellers. Goods scheduled for shipment shortly after 2 August 1990 were typically stored by the sellers pending the search for alternative buyers. In this group, the claimants are generally seeking compensation for losses arising from the resale of the goods to third parties for prices below the originally contracted values. The policyholders also incurred additional storage, insurance, demurrage and other costs, which were part of the indemnity paid by the claimant and are included in the compensation sought before the Commission. In one sub-claim, the policyholder abandoned the goods when the storage costs exceeded the price of the goods.

(b) Specific evidentiary requirements

126. In the case of export credit losses and in addition to evidence of the export credit policy, the Panel also required the claimant to submit evidence of the underlying sales contract between buyer and seller because it is this relationship that is insured by the policy. 37/

(i) Goods sent to buyers in Kuwait

127. The Panel required documentary evidence, in the form of a bill of lading or an airway bill, to establish both the existence of the goods and the date of their shipment to Kuwait. The Panel also required evidence of the date of arrival of the goods in Kuwait, as the fate of the goods could be inferred from this date.

128. The Panel required evidence of the value of the goods, in the form of an invoice, contract or purchase order. The Panel also required evidence of the due date for payment under the contract, to establish whether the due date fell before or after 2 August 1990. The due date for payment was relevant to whether the failure to pay was a direct result of Iraq's invasion and occupation of Kuwait.

129. Where payment was to be made under a letter of credit, the claimant was required to submit a copy of the letter of credit, in addition to evidence that all documents stipulated in the letter of credit were presented to the correspondent bank in accordance with the terms of the credit.

130. The Panel finds that in order to recover compensation for the loss of payment under a contract, where the goods were actually received by the buyer, the claimant must show that the buyer's failure to pay under the contract was a direct result of Iraq's invasion and occupation of Kuwait.

131. Once a buyer receives goods under a contract, risk and title often pass to the buyer. Where the requisite causal connection exists, the buyer may also have sought compensation from the Commission for the loss of the goods. In such cases, the Panel instructed the secretariat to conduct cross-category claim checks in order to prevent any double recovery.

(ii) Goods diverted or retained

132. In claims where goods were resold, the Panel required the claimant to provide satisfactory evidence of the amount of the resale proceeds, to establish the existence of a loss. In the claim where the goods were abandoned, the Panel required the claimant to provide satisfactory evidence explaining why resale was not possible and that it took all reasonable steps to mitigate the loss.

133. In respect of additional costs incurred to divert, store or resell goods destined for Kuwait (storage, demurrage, warehousing, additional insurance or resale costs), the Panel required specific evidence of those costs in the form of invoices detailing the amount of the costs and the dates on which they were incurred.

(c) Analysis and recommendations

(i) Goods sent to buyers in Kuwait

134. The Panel refers to its findings in paragraphs 113 to 119 relating to transhipment losses. In the case of goods sent to Kuwait and lost or destroyed after arrival but before delivery, the Panel considers that the loss of the goods was a direct result of Iraq's invasion and occupation of Kuwait, for the reasons set out in paragraph 113 above. In addition, if non-perishable goods, which were the subject of the relevant sale contract, arrived at a Kuwaiti seaport before 2 July 1990 or at Kuwait Airport before 17 July 1990, then, in the absence of sufficient evidence to the contrary, the Panel presumed that the buyer received the goods. In such claims, the Panel considered that the seller's losses resulted from the Kuwaiti buyer's failure to pay for the goods.

135. The compensability of losses arising from a Kuwaiti party's failure to pay contractual amounts has been considered by the "E2" Panel. That Panel required claimants seeking compensation for losses of this nature to furnish "specific proof that the ... [Kuwaiti] party's failure to perform was the direct result of Iraq's invasion and occupation of Kuwait" 38/ rather than a debtor's economic decision not to fulfil contractual obligations. In the latter case, "such an independent decision would be the direct cause of the non-payment and the resulting loss would therefore not be compensable." 39/ The "E2" Panel also recommended that,

> "[a]dequate proof that a contracting party's inability to perform resulted from Iraq's invasion and occupation of Kuwait would include a showing that performance was no longer possible, for example because the contracting party, in the case of an individual, was killed or physically impaired, or in the case of a business, ceased to exist or was rendered bankrupt or insolvent, as a result of Iraq's invasion and occupation of Kuwait." 40/

136. In the Fourth "E2" Report, the "E2A" Panel adopted this approach, concluding that to satisfy the directness requirement of Security Council resolution 687 (1991), the claimant must make a specific showing that a Kuwaiti buyer's failure to pay for the goods was a direct result of Iraq's invasion and occupation of Kuwait. 41/

137. The Panel adopts the approach of the "E2" Panel in this regard, as followed by the "E2A" Panel. The Panel also adopts the recommendation of the "E2A" Panel to the effect that where the debt was overdue prior to 2 August 1990, or where a commercial dispute had already arisen between the parties prior to Iraq's invasion (as appears in at least one of the first instalment claims), "the loss is regarded as attributable to an independent economic decision of the Kuwaiti purchaser..." 42/

(ii) Goods diverted or retained

138. The Panel finds that, provided that a claimant establishes a causal link between the losses and Iraq's invasion and occupation of Kuwait, claims for goods diverted or retained, whether resold or not, are compensable in principle.

139. The requisite causal link is that the loss was a direct loss resulting from Iraq's invasion and occupation of Kuwait. One claim concerns a loss arising out of the resale of fruit sold at a lower price, because of a glut in citrus supplies at the time of sale, resulting in turn from an unusual concentration of citrus arrivals in Europe in early October 1990. The Panel considers that this loss did not result directly from Iraq's invasion and occupation of Kuwait and, accordingly, recommends no compensation for this loss.

140. The Panel also adopts the "E2A" Panel's recommendation to the effect that where, at the time of Kuwait's liberation on 2 March 1991, a seller had already disposed of the goods to a third party in an effort to mitigate its losses, paragraph 10 of Governing Council decision 9 is not applicable. 43/

(d) Basis of valuation

(i) Goods sent to buyers in Kuwait

141. In export credit contracts relating to goods that have been shipped, the indemnity reflects the amounts due under the contract for those goods. Accordingly, the Panel considers that the compensation in such cases should be based on the invoice value of the goods that were the subject of the export sale contract, together with any freight and handling charges and the insurance premium payable in respect of the contract (to the extent that such additional costs are payable by the buyer under C&F or CIF contracts).

(ii) Goods diverted or retained

142. Where the goods were resold, the Panel considers that the appropriate measure of loss is the difference between the original contract price and the

resale price, plus any reasonable incidental costs, such as freight, unloading container fees and storage fees (see paragraphs 81 and 82) to the extent that these costs were incurred in mitigation of the loss. This is consistent with the "E2A" Panel's findings that the compensation should be sufficient to restore the party that suffered the loss to the same position, but no better than it would have been in had the contract been performed. 44/ The Panel also adopts the "E2A" Panel's finding that any expenses saved by non-delivery, and any gains on the resale, must be offset against the losses incurred. 45/

143. Where goods could not be resold despite reasonable efforts, the Panel also adopts the "E2A" Panel's recommendation that the claimant may recover the contract price, less salvage value and expenses saved, plus any reasonable incidental costs. 46/

3. Contract frustration losses/wrongful calling of guarantee

(a) Summary of relevant facts

144. One claim relates to contract frustration indemnity policies. This includes three sub-claims relating to policies insuring contracts between the policyholders and Iraqi entities against the frustration of the contract or the failure or refusal of the issuing bank to honour its obligations under an irrevocable letter of credit. Following Iraq's invasion of Kuwait, the issuing bank did not effect payment in accordance with the letters of credit. The claimant sought compensation for the amount of the indemnity paid under each policy.

145. One sub-claim, for example, relates to losses arising out of a contract between the policyholder, its Kuwaiti partner and the Kuwaiti Ministry of Public Works. The contract concerned dredging and construction works to be undertaken in Kuwait. The works were suspended following Iraq's invasion of Kuwait on 2 August 1990 after which the policyholder evacuated and repatriated its expatriate staff. It also abandoned its plant, equipment, offices, vehicles and materials, along with the personal possessions of its staff. All were said to have been looted or destroyed by Iraqi armed forces during Iraq's occupation of Kuwait. In January 1991, the Government of Kuwait declared that all public works contracts in Kuwait were terminated, due to force majeure. 47/ The policyholder held a policy that covered, inter alia, the unilateral termination of a contract by an employer where the employer had no right or cause to terminate the contract. The Panel does not recommend compensation for this claim, as there was insufficient evidence that the losses were direct losses resulting from Iraq's invasion and occupation of Kuwait.

146. In another claim, one sub-claim relates to a policy covering the wrongful calling of a guarantee. 48/ The claimant's policyholder was engaged in the supply and installation of equipment for a Kuwaiti employer, pursuant to which contract the policyholder furnished a performance bond. The

employer's bank invoked payment under the performance bond and debited the policyholder's account. The claimant has sought compensation for the wrongful calling of the performance bond. The Panel does not recommend compensation for this claim (see paragraph 153 below).

147. In all claims, the claimants sought compensation from the Commission in the amount of the indemnities that they paid to their respective policyholders.

(b) Specific evidentiary requirements

148. In all of these claims, the Panel required a claimant to submit evidence that the policyholder had fulfilled its obligations under the relevant contract or had been prevented from doing so by Iraq's invasion and occupation of Kuwait.

149. Where payment was to be effected by letters of credit, the Panel required the claimant to submit evidence as to the due dates for payment under the relevant letters of credit. If payment was due but was not honoured prior to 2 August 1990, the Panel sought additional evidence to assess whether the failure to pay was a direct result of Iraq's invasion and occupation of Kuwait.

150. In respect of the claim for the wrongful calling of a guarantee, the Panel required that the claimant submit evidence of the existence of the guarantee, the demand under the guarantee and payment in accordance with its terms.

(c) Analysis and recommendations

151. The Panel refers to the findings of the "E2" Panel relating to the directness requirement, set out in paragraph 135 above. The Panel adopts those findings in relation to claims involving the frustration of contracts. Accordingly, the Panel finds that, to be compensable, the claimant must provide specific evidence that the contracting party's inability to perform the contract resulted from Iraq's invasion and occupation of Kuwait. In relation to the claim based on the wrongful calling of a guarantee, there must be evidence that the wrongful calling resulted from Iraq's invasion and occupation of Kuwait rather than from an independent decision to call upon the guarantee.

152. In the circumstances set out above, the Panel recommends that these losses, where proved and where they are direct losses resulting from Iraq's invasion and occupation of Kuwait, are compensable in principle.

(d) Basis of valuation

153. As stated in paragraph 39 above, for such losses the Panel recommends compensation to claimants for the actual value of the underlying loss suffered by the claimant's policyholder. Accordingly, the Panel recommends that the valuation of losses in claims of this category should be based upon

the amount of the payment due under a letter of credit, or the amount of the losses incurred when a contract was terminated, as appropriate according to the claim. The Panel does not recommend compensation for the payment made in respect of the guarantee, as there was no evidence that the underlying loss was a direct loss resulting from Iraq's invasion and occupation of Kuwait.

C. Other tangible property

1. Loss of vessels

(a) Summary of relevant facts

154. Five of the first instalment claims were for payments made to policyholders in respect of the loss of vessels. All of the claimants alleged that they insured or reinsured their policyholders' vessels for war risks.

155. One claimant sought compensation for the loss of a vessel that was loading cargo in Shuaiba, Kuwait, on 31 July 1990. The claimant stated that Iraqi soldiers boarded the vessel on 3 August 1990, removed her crew and detained her in Kuwait, and later in Iraq, for approximately 30 months. The vessel was then permitted to sail to the United Arab Emirates, where it was sold. The claimant sought compensation for amounts that it paid to the owners for the loss of the vessel. There was evidence that the agreed value of the vessel under the policy was higher than its market value at the date of loss. In such a claim, the Panel would recommend compensation for the loss of the vessel of an amount based on the market value (see paragraph 39).

156. Another claimant has sought compensation for the loss of a barge that was operating off the coast of Iraq. On 6 August 1990, the vessel's officers and crew abandoned her, escaping on life boats. The vessel was seized by Iraqi troops and never recovered. The owners claimed under the policy for the total loss of the vessel. The claimant, a retrocessionaire, paid under its retrocession agreement for its share of the loss of the vessel. It claimed on its own behalf and for other reinsurers and retrocessionaires.

157. One claim concerned a vessel that was chartered to an Iraqi state agency. Following Iraq's invasion of Kuwait, the owners were unsuccessful in securing the release of the vessel. The vessel was insured for an agreed value with a pool of underwriters led by the claimant. The claimant retained a portion of the risk for its own account and reinsured the remainder. The claimant sought compensation for the entire amount paid to the owners, together with the fees paid to the brokers.

158. One claimant has sought compensation for a payment made to its policyholder for the loss of a yacht. The claimant asserts that the yacht was in Kuwait on 2 August 1990, when it was captured by Iraqi armed forces and sunk. The owner claimed under its insurance policy. The claimant reinsured the risk, but has claimed on behalf of one of the reinsurers.

159. One claimant seeks compensation for the contingent loss of a vessel. It claims that its policyholder owned a vessel that was under charterparty to deliver cargo to an Iraqi party in Aqaba, Jordan. The vessel was diverted to Italy as a result of the trade embargo (see paragraphs 26 and 27). The cargo was sold and the proceeds placed in an escrow account. An Iraqi Government entity brought legal proceedings against the owners in respect of the cargo. In reliance upon article 29 of Security Council resolution 687 (1991) 49/, the owners did not participate in the proceedings and judgment was entered against them. There is no evidence that the judgment creditor sought to enforce the judgment. The claimant accepted the owners' claim under its policy, on the basis that the owners' vessels might be arrested, seized or confiscated by Iraqi authorities in satisfaction of the judgment debt. The claimant seeks compensation for this contingent loss. The Panel does not recommend compensation for claims of this nature, in which the loss has not yet materialised. To be compensable within the meaning of paragraph 21 of Governing Council decision 7, the claimant must have suffered a direct loss.

(b) Specific evidentiary requirements

160. The Panel required the claimants to provide satisfactory evidence to establish the policyholder's ownership of the vessel, its location in Iraq or Kuwait as of 2 August 1990 and that it was lost or destroyed during Iraq's invasion and occupation of Kuwait.

(c) Analysis and recommendations

161. The Panel finds that, where a claimant has demonstrated that a vessel was in a particular location in Iraq after 2 August 1990 or in Kuwait between 2 August 1990 and 2 March 1991 and was lost or destroyed, such loss was a direct loss caused by Iraq's invasion and occupation of Kuwait and is compensable in principle. This is consistent with the findings of the "E2" and "E2A" Panels. 50/

(d) Basis of valuation

162. In relation to vessels, the Panel recommends that the underlying compensable loss is the market value of the vessel at the date of the loss of that vessel (see paragraph 40 above).

163. The Panel considered that the significant amounts involved in these claims made an independent valuation appropriate. Accordingly, the Panel engaged consultants as specialist valuers to assist it in ascertaining the value of the vessels on the dates of loss. For each vessel, the consultants provided a valuation based on an analysis of market values of comparable vessels pertaining at the relevant date of loss.

2. Loss of aircraft

(a) Summary of relevant facts

164. Three of the first instalment claims relate to the loss of a Boeing 747 aircraft (the "Aircraft") operating as British Airways ("BA") Flight 149. The Aircraft was scheduled to fly from London, England to Kuala Lumpur, Malaysia with stopovers at Kuwait and Madras, India. It departed from London on 1 August 1990 and arrived at Kuwait Airport (the "Airport") in the early hours of 2 August 1990. Shortly after 02.00 hours GMT, the Kuwait Airport Authority announced that the Airport was closed. Soon afterwards, the Airport was attacked by Iraqi armed forces, which took control of the Airport and detained the passengers on Flight 149.

165. Efforts to obtain release of the Aircraft were unsuccessful. During the liberation of Kuwait in February 1991, the Aircraft was totally destroyed while on the ground at the Airport. Neither BA nor its underwriters were able to ascertain with certainty the events that led to the total destruction of the Aircraft.

166. On 28 March 1991 BA sent its brokers a survey report on the Aircraft that stated that the Aircraft had been totally destroyed, but that found that certain parts were salvageable. BA, however, determined that the remaining parts should not be reused and entered into an agreement (the "Agreement") with a specialist salvage firm for this purpose. The salvage firm undertook to ship the nose wheel to BA and scrap the remaining components of the Aircraft. Any retention or sale of the Aircraft parts constituted a breach of the Agreement.

167. After arrival in Kuwait, the salvage firm reported that it could not find the nose wheel and that the remainder of the parts had been removed from the Airport. The Panel's investigations revealed that some of the parts were subsequently offered for sale in the United States of America. However, it is alleged that neither BA nor its brokers profited from those sales, which became the subject of criminal investigations. Due to a lack of evidence and the salvage firm's poor financial position, the insurers did not require BA to pursue a claim against the salvage firm.

168. BA claimed on its insurers for the agreed value of the hull of the Aircraft. This claim predated the physical destruction of the Aircraft, recognising the loss of the Aircraft with effect from 2 August 1990. Having paid this claim, BA's hull insurers are claiming compensation before the Commission for payments made.

169. BA's liability insurers also sought compensation for claims made against BA by passengers on Flight 149 (see paragraphs 186 to 200).

(b) Specific evidentiary requirements

170. In respect of the loss of the Aircraft, the Panel required evidence of BA's ownership of the Aircraft and evidence that the Aircraft was in Kuwait at the time of Iraq's invasion of Kuwait.

(c) Analysis and recommendations

171. The Panel considers that the totality of evidence submitted by the claimants, including a statement from the Captain, a BA employee, established that the Aircraft arrived in Kuwait in the early hours of 2 August 1990 and was detained at the Airport until it was destroyed during the bombing of Kuwait Airport in February 1991.

172. The Panel considered whether the loss of the Aircraft was compensable notwithstanding that it may have been caused by Allied Coalition Forces rather than by Iraqi armed forces. Paragraph 21 of Governing Council decision 7 defines direct loss as, inter alia, any loss suffered as a result of "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991." Accordingly, the Panel finds that the loss of the Aircraft is compensable in principle.

173. The Panel also noted that some parts of the Aircraft were deemed salvageable and recommends that the amount of compensation in respect of the Aircraft must be reduced to reflect the value of the salvageable parts. The Panel considered the circumstances surrounding the sale of those parts in the United States of America and recommends that the actions of third parties in the disappearance of the parts was a separate cause of loss for which Iraq should not be held responsible.

(d) Basis of valuation

174. The Panel recommends that the basis of valuation of an aircraft should be the market value of the aircraft at the date of its loss. The reasons for this recommendation are the same as those relating to the basis of valuation for the loss of vessels (set out in paragraph 40 above). Accordingly, the Panel instructed its consultant valuers to provide such a valuation.

175. As regards the salvageable parts, the consultants retained by the Panel were unable to estimate their value. Accordingly, in order to reflect the value of the parts in the recommended award, the Panel recommends an adjustment to the value of the Aircraft.

D. Legal liabilities

176. This category of claims relates to payments in respect of policyholders' legal liability to other parties, as a direct result of Iraq's invasion and occupation of Kuwait. There are a number of sub-categories of claims under this heading.

1. Salvage fees

(a) Summary of relevant facts

177. One claimant was the managing agent of the leading underwriter of a policy insuring a vessel that, while in Kuwait on 2 August 1990, was detained by Iraqi troops. The vessel's master, some officers and crew abandoned her. Iraqi authorities informed those who remained in command that the vessel was now under Iraqi flag and ordered the vessel to proceed to an Iraqi port. Once out of Kuwait, one of those left in command ordered the crew to head to Saudi Arabian waters. The vessel was later redelivered to its owners. After arbitration proceedings, the claimant paid a settlement amount to all salvors (the "salvage payment"). The claimant has sought compensation for the salvage payment, an amount paid for the salvors' legal fees, an amount paid to the owners for investigating and mitigating the underwriters' loss, amounts paid for its own legal costs and interest on the salvage payment.

(b) Specific evidentiary requirements

178. The Panel required the claimant to provide evidence of the circumstances of the salvage and evidence of the loss, i.e., the payment of the salvage award and other costs.

(c) Analysis and recommendations

179. In a number of jurisdictions, 51/ there are two conditions precedent to a salvage payment: the vessel must have been abandoned by its officers and crew and the salvage must have been successful. Both conditions are satisfied in this claim.

180. Under English law, which governed the policy, the claimant insurers were liable for the salvage payment. 52/ As the cause of the acts entitling the salvors to their award was Iraq's invasion and occupation of Kuwait, and on the basis that the salvage payment was made in mitigation of a loss, the Panel recommends that the insurers' payment for the salvage payment is compensable. The Panel also recommends that the legal fees associated with the arbitration that resulted in the salvage payment are compensable as a direct loss resulting from Iraq's invasion and occupation of Kuwait. 53/

(d) Basis of valuation

181. The underlying loss in claims of this nature is the amount of the salvage payment, including any associated costs, for which the owners were legally liable. In addition, the Panel considers that the legal costs incurred by the claimant were direct losses resulting from Iraq's invasion and occupation of Kuwait. The Panel, therefore, recommends that the amount of compensation should be based on the amount of the salvage payment and the legal costs incurred by all parties in connection therewith.

2. Other losses associated with the loss of a vessel

(a) Summary of relevant facts

182. One of the claims for the loss of a vessel concerns a vessel that was detained by the Iraqi authorities but later recovered by the claimant. The claimant seeks compensation for amounts paid in respect of incidental costs incurred by the owners: loss of use of the vessel, crew wages and repatriation expenses, loss of or damage to crew effects, victualling and insurance during the detention, the cost of hiring a new captain and crew to recover the vessel and a payment to the Iraqi Government for maintenance, repairs and port dues during the detention.

(b) Specific evidentiary requirements

183. The Panel required the claimant to provide evidence that the vessel had been detained and to provide evidence of the costs incurred in connection with the detention, such as invoices relating to the claimed costs.

(c) Analysis and recommendations

184. The Panel recommends that, in principle, the costs alleged were incurred as a direct result of Iraq's invasion and occupation of Kuwait and in mitigation of the loss of the vessel, and on these bases are compensable.

(d) Basis of valuation

185. The Panel considers that the basis of valuation in this case is the amount of the underlying losses (e.g., the loss of seamen's effects). To determine this amount, the Panel considered the evidence submitted as to the losses and costs incurred. For example, the Panel recommends that an award for repatriation costs be based on the invoice value of these costs.

3. British Airways passenger losses

(a) Summary of relevant facts

186. BA's liability insurers filed claims in relation to losses arising out of the detention of the Aircraft's passengers in Kuwait and Iraq and the loss of their personal property. 54/

187. After Iraqi armed forces took control of Kuwait Airport, the passengers disembarked from the Aircraft. Their checked baggage was never recovered from the cargo holds. Iraqi armed forces took the passengers to a hotel. Some passengers and crew were later taken to Baghdad as human shields. Eventually, all were released.

188. Soon after the invasion, BA set up an Emergency Procedure Information Centre ("EPIC") and Operations Control Intelligence Centre ("OCIC"). In addition to the costs incurred in this connection, BA also incurred other costs and received claims from passengers resulting from their detention.

Certain passengers commenced legal proceedings against BA in the United Kingdom (England and Scotland), France and the United States of America.

189. BA was insured for airline liability risks with a number of underwriters, who authorised BA to handle claims that could be settled at reasonable levels. Otherwise, claims were referred to the underwriters' lawyers. BA settled passengers' claims and paid expenses out of its own funds. BA was reimbursed periodically by its brokers, who collected payment from insurers.

190. The total amount that BA paid in respect of passenger claims included expenses for hotel accommodation and ancillary expenses, general expenditure, repatriation, emergency procedures and legal costs.

191. BA successfully defended or settled all legal proceedings brought against it, except in France, and incurred legal costs accordingly. Having had judgment awarded against it in France, BA was ordered to pay the French plaintiffs' legal costs as well as the amount of the French judgment. 55/ The claimants, BA's underwriters, are seeking compensation for payments made to BA in respect of payments to passengers, pursuant to the French judgment and otherwise, the expenses of EPIC and OCIC and the costs of the legal proceedings and settlements.

(b) Specific evidentiary requirements

192. The Panel required evidence of payments by BA to passengers, evidence of the amounts incurred in respect of EPIC and OCIC and evidence of the nature of those payments and expenses, in order to enable the Panel to judge whether the payments or expenses were direct losses and reasonably incurred.

(c) Analysis and recommendations

193. The compensability of the claims relating to BA's passenger losses is primarily to be determined by considering the Governing Council's decisions as to directness and compensability. In its deliberations on this issue, the Panel has also considered the reasons for the decisions given by the French courts, as well as the different outcomes of the litigation against BA in other jurisdictions. However, the Panel notes the provisions of article 31 of the Rules, that the Panel is to apply first the relevant Security Council resolutions and Governing Council decisions, and only then other relevant rules of international law.

194. The Panel considered the reasons underlying the French courts' decisions, which found that BA had put the passengers on the Aircraft into danger by proceeding to land at the Airport when there was sufficient information to indicate that Iraq had invaded or was about to invade Kuwait. In reaching this result, the French courts applied French domestic law on the standard of care that the carrier owed to its passengers. The Panel notes that courts in several other jurisdictions did not consider the issue of BA's liability, on the basis that they found that they had no jurisdiction over

the passengers' claims under the Warsaw Convention (see paragraph 80), which limits liability for passenger claims against air carriers to specified ceiling amounts.

195. The litigation before municipal courts raised two possible issues. First, the Panel considered whether BA's actions in landing the Aircraft at the Airport in the early hours of 2 August 1990 was a violation of the carrier's duty of care (the determination of the French courts) that would constitute an intervening cause breaking the chain of causation between Iraq's invasion and occupation of Kuwait and the losses suffered by the passengers. Secondly, the Panel considered whether the Warsaw Convention limited the liability of BA (the determination of the English and Scottish courts) such that the underlying loss was limited to amounts payable under that convention.

196. With respect to the first issue, the Panel finds that the actions of BA did not constitute an intervening cause that broke the chain of causation between Iraq's invasion and occupation of Kuwait and the losses incurred by BA's passengers. The Panel finds that the Aircraft made a regularly scheduled stop in Kuwait and that the losses suffered by the passengers with regard to their detention in Kuwait, as well as the loss of their luggage, were caused by actions taken by Iraq after the Aircraft landed. For these reasons, the Panel finds that the losses suffered by the passengers of the Aircraft are direct losses arising from the actions of Iraq within the meaning of paragraph 21 of Governing Council decision 7.

197. With respect to the limitations of liability set out in the Warsaw Convention, the Panel finds that such limitations concern the contractual relations between BA and the passengers which should not be applied to limit the liability for losses directly resulting from the actions of a third party, in this case Iraq's invasion and occupation of Kuwait.

198. Under such circumstances, the Panel concludes that the claims for BA's payments made to passengers and for the costs incurred were a direct result of Iraq's invasion and occupation of Kuwait and, where reasonably incurred, are compensable in principle.

199. The Panel considers that the portion of the claim relating to the legal costs of the proceedings brought by passengers against BA is compensable in principle. These costs in general were incurred in mitigation of BA's losses. The Panel has, however, applied an adjustment to the amount of recommended compensation, as there was insufficient evidence that all of the legal costs were incurred with respect to this litigation.

(d) Basis of valuation

200. In assessing the value of the losses claimed in this category, for the purpose of recommending the amount of the awards to the claimants, the Panel took account of the amount of the payments which BA agreed, or was required, to make to passengers and the invoice value for other costs incurred.

4. Workers' compensation and employer's liability

(a) Summary of relevant facts

201. Four of the first instalment claims relate to policies covering a policyholder's liability to its employees. 56/

202. One claim relates to injuries to policyholders' personnel allegedly incurred in connection with the firefighting project launched in Kuwait following its liberation from Iraq's occupation. The claimant is seeking compensation for the amount of the indemnity paid for these injuries.

203. One claim contains a sub-claim for costs in relation to an employee of the policyholder who was detained in Iraq, including the loss of his personal effects.

204. One claim involves a policy covering, inter alia, professional liability resulting from negligent acts, errors or omissions, as well as claims arising from any legal liability of whatsoever nature. The policyholder was engaged in two contracts with the Government of Iraq. The policyholder's employees working on these projects were allegedly detained by Iraqi authorities following Iraq's invasion of Kuwait. One employee was on BA Flight 149 that stopped in Kuwait on 2 August 1990. That employee was detained by Iraqi authorities and transferred to Baghdad, then to a power plant in Basra where he was used as a human shield. The claimant has sought compensation for the amounts it paid to the policyholder for losses incurred by a wholly-owned subsidiary of the policyholder on one of the projects, costs incurred at the policyholder's headquarters during and after the period of the employees' detention, including salaries of personnel monitoring the crisis, payments to families of detainees, the costs of chartered air flights to evacuate detainees, legal expenses and sundry costs. One of the charter flights evacuated the policyholder's employees from Dhahran, Saudi Arabia, a city targeted by Iraqi missiles.

205. Another claimant has sought compensation for amounts that it paid to policyholders under employers' liability and workers' compensation policies. This claimant submitted 14 sub-claims.

(b) Specific evidentiary requirements

206. In respect of these claims, the Panel required evidence of the employment relationship, evidence of each employee's injury, in the form of medical reports, and evidence substantiating the loss of personal effects. The Panel also required claimants to provide evidence that the loss or injury was sustained as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Analysis and recommendations

207. The Panel finds that these losses, where proved and where direct losses resulting from Iraq's invasion and occupation, are compensable in principle.

208. However, the Panel notes that a number of the claims contain insufficient evidence of causation and insufficient evidence of any underlying loss. For example, one claimant has sought compensation for workers' compensation payments made to policyholders' employees in respect of injuries allegedly suffered as a result of Iraq's invasion and occupation of Kuwait. That claimant did not submit any medical reports to substantiate that the relevant employee actually suffered the injury or condition alleged. The Panel does not, therefore, recommend compensation for such claims.

209. The first six sub-claims related to payments to a policyholder engaged in military-related services as a United States Government contractor in Saudi Arabia and neighbouring countries during Iraq's invasion and occupation of Kuwait. The sub-claims were for payments made to employees allegedly injured during their work on various airbases and installations. One employee, for example, was said to have been injured after tripping during a blackout imposed in Saudi Arabia as part of the war measures, while others suffered symptoms said to have been the result of vaccinations and medications administered as preventative measures. The Panel recommends that no compensation be awarded for these sub-claims on the basis of Governing Council decision 19, which provides that the costs of the Allied Coalition Forces are not eligible for compensation.

210. A further seven sub-claims concern indemnities to a policyholder for payments to employees within the policyholder's group of companies. The payments were for injuries that the employees allegedly sustained while detained by Iraqi armed forces and while working in Kuwait in August 1991 on the project to extinguish the oil well fires. One employee, working to provide temporary access for firefighting crews in Kuwait, allegedly suffered injuries from exposure to heat and toxic chemicals. Another employee allegedly suffered a stomach ulcer and post-traumatic disorder from exposure to hazardous environmental conditions in Kuwait after its liberation. A number of plaintiffs in a class action against the policyholder and others alleged that the policyholder was involved in the manufacture of chemical and biological reagents and their component parts, to which they claimed to have been exposed during the military operation to free Kuwait. There was no evidence that any of the plaintiffs were employees of the policyholder and, therefore, covered by the relevant policy. In any event, the Panel does not recommend compensation for these sub-claims, as the claimant did not submit any evidence that the employees suffered any underlying losses. For example, the claimant did not submit medical reports to substantiate the employees' alleged injuries or medical conditions.

(d) Basis of valuation

211. As the Panel is not recommending any compensation in this category of claim, the question of valuation does not arise.

E. Other losses

1. Summary of relevant facts

212. Three claimants have submitted claims relating to policies covering kidnap, ransom, extortion and other personal losses. The claims relate to payments made in respect of policyholders' employees held hostage in Iraq and Kuwait during Iraq's invasion and occupation of Kuwait and payments made to compensate injuries sustained during the bombing of Kuwait by Allied Coalition Forces.

213. One of the claimants issued policies to a number of different corporate policyholders. Certain of the policyholders' employees, allegedly in Kuwait at the time of Iraq's invasion, were detained and later moved to Iraq as human shields before being released. The claimant seeks compensation for the sums that it paid to these policyholders, which included the employees' salaries during their detention. The claimant also seeks compensation for an amount paid to a policyholder for the costs of a detained employee's wife who travelled to Iraq, the costs of visits by the policyholder's security department to Washington, D.C. for State Department briefings and retainer fees for two security consulting firms hired to locate the detainee and develop plans for his release or rescue. Another payment included the salary costs of employees for a period after their detention until they were fit for work. Another payment included hardship and danger allowances paid to detainees. In addition, Iraqi armed forces held the dependants of one policyholder's employees hostage in Kuwait. The claimant indemnified that policyholder for payments relating to salary costs, and living and travel expenses. One detainee was forced to hide in the Embassy of the United States of America in Kuwait, before being taken to Baghdad by Iraqi armed forces. The indemnity paid to the policyholder, the detainee's employer, included amounts for payments made to the detainee for loss of personal belongings, cars damaged in escape attempts and an amount for living expenses that the detainee allegedly incurred during his detention. In relation to all except one of the sub-claims, however, there was insufficient evidence of the underlying losses and the Panel does not, therefore, recommend compensation for the sub-claims concerned (see paragraph 219 below).

214. Another claimant seeks compensation on its own behalf and for other claimants subscribing to four different policies. The claim relates to payments to 17 company executives held hostage in Iraq and Kuwait during Iraq's invasion and occupation of Kuwait. The claimant did not disclose the names of the policyholders, on security grounds. The Panel does not recommend compensation for this claim (see paragraph 219 below).

2. Specific evidentiary requirements

215. In relation to the hostage claims, the Panel required claimants to submit evidence to demonstrate that detained employees were on the

policyholder's payroll. The required evidence included copies of pay slips for the relevant period or an extract from the policyholder's payrolls.

216. The Panel also required a claimant to submit evidence to establish that payments were made under these policies for amounts that the policyholder paid to its employees. For example, a claimant was required to establish that an employee received his salary during the time of detention, in order to claim for that amount.

217. In all cases the Panel required a claimant also to provide evidence of the occurrence of the insured event, i.e., the fact of the kidnapping, detention or injury at some time during the period from 2 August 1990 to 2 March 1991.

3. Analysis and recommendations

218. The Panel recommends that payments made by an employer to employees and their dependants, including humanitarian expenses such as food and assistance to relatives of detained employees, are eligible for compensation. In relation to detainees in general, the Panel has been guided by paragraphs 21(b) and 21(e) of Governing Council decision 7. 57/. In relation to payments made in respect of injuries sustained by policyholders, the Panel finds that such claims are compensable in principle where, as in this case, it can be shown that the injury was a direct loss resulting from Iraq's invasion and occupation of Kuwait.

219. However, in most of the sub-claims in respect of these claims, the claimants failed to provide sufficient evidence of the underlying loss. For example, one claimant failed to provide evidence of the identity of the policyholders and, therefore, the detained employees. The Panel recommends no compensation for such claims.

4. Basis of valuation

220. The Panel finds that, where compensable, the underlying losses in these claims are the payments made by policyholders to detained employees or by insurers to injured persons or their dependants. 58/ To the extent that the Panel recommends compensation, it does so on the basis of these payments.

IX. THE PANEL'S RECOMMENDATIONS

221. Based on the matters set out in this report, the Panel recommends that the amounts set out in Annex II below be paid in compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait.

Geneva, 18 October 2000

(Signed) Mr. Roberto MacLean
Chairman

(Signed) Mr. Nigel Alington
Commissioner

(Signed) Mr. Rafael Vizcarrondo
Commissioner

Notes

Please refer to tables 1 and 2 for full citations to Panel reports and Governing Council decisions.

1/ See generally, E3(1) report, para. 23.

2/ A number of Panels considered the directness requirement. For example, E2(1) report paras. 106-169; E2(3) report, paras. 53-86; E2(4) report, paras. 100-153 and 178-193; F3(1) report, para. 23.

3/ E2(1) report, para. 90.

4/ Ibid., para. 90.

5/ E2(4) report, para. 89.

6/ See for example, E2(1) report, paras. 164-169. The trade embargo was established under Security Council resolution 661 (1990), adopted on 6 August 1990. The trade embargo against Kuwait was lifted on 3 April 1991. The trade embargo against Iraq is still in force.

7/ E2(2) report, para. 107.

8/ Pursuant to Governing Council decision 30, the deadline for filing category "E" and "F" claims was 1 January 1996. At the Governing Council's twenty-second session held from 14 to 15 October 1996 the Council decided that late claims in categories "E" and "F" would be considered for filing if submitted before 1 January 1997 and if based on strong original contemporaneous evidence as to the claimant's good faith.

9/ This conclusion was reached at the Governing Council's twenty-seventh session held from 9 to 11 March 1998.

10/ Certain technical terms specific to the insurance industry are defined in the Glossary.

11/ Governing Council decision 7, para.22.

12/ See generally, John Bassett Moore, History and Digest of International Arbitrations to Which the United States Has Been a Party, Volume I (Washington, Government Printing Office, 1898), pp. 495-702; Theodor Meron, "The Insurance and the Insured Under International Claims Law", American Journal of International Law, Vol.68, 1974, pp. 628-647, at p.630.

13/ This means, for example, that a co-insurer or a reinsurer may only be awarded compensation for its portion of the risk. However, in certain cases the co-insurer has provided sufficient evidence of authority to claim on behalf of other co-insurers.

14/ This is the case, for example, under the Marine Insurance Act 1906 (United Kingdom), except in cases of fraud.

15/ E2(4) report, para. 158. In the words of the "E2A" Panel, "[w]here a compensable claim is based on the non-payment for goods received by the buyer, the Panel finds that an appropriate measure of compensation is the contract price, plus any reasonable incidental costs directly resulting from the non-payment..."

16/ Governing Council decision 63, adopting the E4(1) report.

17/ E4(1) report, paragraph 34.

18/ Ibid., paragraph 36.

19/ Ibid., paragraph 53.

20/ Ibid., paragraph 56.

21/ Governing Council decision 9, para. 6.

22/ E2(1) report, para. 124.

23/ Ibid, para. 124-126.

24/ E1(3) report, paras. 150-154. See also E3(1) report, para. 96 and E1(1) report, paras. 117-118.

25/ Article 20 provides that "[t]he carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

26/ For example, E1(3) report, paras. 150-154 (see note 24 above).

27/ This requirement was set out in the category "E" and "F" claim forms, by which the claimants were required to submit their claims to the Commission.

28/ This ongoing obligation was also set out in the category "E" and "F" claim forms.

29/ See, for example, "Report to the Secretary-General by a United Nations Mission, led by Mr. Abdulrahim A. Farah, former Under-Secretary-General, assessing the scope and nature of damage inflicted on Kuwait's infrastructure during the Iraqi occupation of the country from 2 August 1990 to 27 February 1991" (S/22535) (26 April 1991) (the "Farah Report"); "Report on the Situation of Human Rights in Kuwait under Iraqi Occupation", by Mr. Walter Kälin, Special Rapporteur of the United Nations Commission on Human Rights, E/CN.4/1992/26 (16 January 1992); C(1) report, pages 60-61; E2(1) report, paras. 146-147.

30/ E2(4) report, paras. 127 and 129.

31/ Ibid., para. 131.

32/ Ibid., para. 147.

33/ Ibid., paras. 140-143.

34/ Ibid., para. 147(b).

35/ Ibid., para. 147(b).

36/ Ibid., para. 147(c).

37/ One of the claimants submitted a copy of its standard export credit policy instead of the specific export credit policy applicable to each insured contract. The Panel has accepted this on the basis that the standard policy applied to all insured contracts.

38/ E2(2) report, para. 89.

39/ Ibid., para. 89.

40/ Ibid., para. 89.

41/ E2(4) report, para.136.

42/ Ibid., para. 137.

43/ Ibid., para. 150.

44/ Ibid., para. 157.

45/ Ibid., para. 161.

46/ Ibid, para. 163.

47/ Order No. 148 of Kuwait's Council of Ministers.

48/ "Wrongful" is the word used by insurers to apply to calls on guarantees in circumstances where the policyholder is not in breach of its obligations under the contract, or if it is, where that breach has been caused by one of the events normally insured by political risk insurers.

49/ Paragraph 29 of Security Council resolution 687 (S/RES/687(1991)) provided that, inter alia, all States should take the necessary measures to ensure that no claim should lie at the instance of the Government of Iraq or of any person or body in Iraq in connection with any contract or other transaction where its performance was affected by reason of the measures taken in resolution 661 (1990) and related resolutions.

50/ See the E2(3) report, para. 167 and E2(4) report, para. 190.

51/ For example, the International Convention on Salvage, 1989, which entered into force generally on 14 July 1996, embodied previous customary

international law and contained similar provisions as those set out in paragraph 179 of this report.

52/ Grand Union v London Steamship Owners Mutual Association [1962] 1 Lloyd's Rep. 483.

53/ See E4(5) report, para. 109. In that report, the "E4" Panel recommended that a claimant be awarded compensation for fees incurred to pursue debtors, when the bad debts are themselves compensable and the claimant can show that it would not have incurred the costs but for Iraq's invasion and occupation of Kuwait.

54/ BA also claimed in another category before the Commission, for losses relating to, inter alia, compensation payments and allowances to BA staff and crew detained by the Iraqi armed forces in Kuwait and Iraq and certain OCIC and EPIC expenses not claimed in the "E/F" category. The "E2" Panel awarded compensation to BA: E2(3) report, paras. 7-20 and 160-162 and Annex I to that report.

55/ In its judgment of 12 November 1996, the French Court of Appeal ordered BA to indemnify the Fonds de Garantie des Victimes des Actes de Terrorisme et D'Autres Infractions (the "Fund") for payments to 65 passengers who were on the Aircraft. The Fund is a French public organisation set up under the French Insurance Code to provide financial assistance to victims of terrorism or other violent acts. The Fund had indemnified French passengers and their relatives, for detention-related costs and expenses. BA appealed to the Cour de Cassation which, in July 1999, upheld the lower Court's judgement and found BA to have failed in its duty to carry the passengers safely to their respective destinations. BA has exhausted all appeals.

56/ One policy also insured the policyholder against loss of, or damage to, its own equipment and the insurer has claimed compensation for payments made in this respect. The Panel, however, considers that these payments are not compensable, as the evidence provided in support of this claim was insufficient in various respects.

57/ As regards humanitarian expenses, the Panel follows the recommendation of the "E1" Panel. See the E1(3) report, paras. 433-435. In that report, the "E1" Panel found that proven humanitarian expenses were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

58/ Although claims included amounts for other costs incurred by policyholders, the Panel recommends no compensation for these elements of the claim, on the ground that these were not a direct result of Iraq's invasion and occupation of Kuwait.

Table 1. Governing Council decisions referred to in the present report

Decision No.	Title	Document No.
1	Criteria for expedited processing of urgent claims	S/AC.26/1991/1
2	Criteria for additional categories of claims	S/AC.26/1991/7/Rev.1
3	Application and modification of compensation for business-loss type of damages and their valuation	S/AC.26/1991/3
4	Further measures to avoid multiple recovery of compensation by claimants	S/AC.26/1992/10
5	Compensation for business-loss resulting from Iraq's unlawful invasion and occupation of Kuwait where the trade embargo and related measures were also a cause	S/AC.26/1992/16
6	Payment of interest	S/AC.26/1992/18
7	Military costs	S/AC.26/Dec.7(1992)
8	Decision by the Governing Council not to accept further corporate and government claims after 1 January 1996	S/AC.26/Dec.8 (1994)
9	Decision concerning the first instalment of "E4" claims	S/AC.26/Dec.9 (1994)

Table 2. List of Panel reports and recommendations referred to in the present report

Short name	Title	Document No.
C(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims), adopted in Governing Council decision 25 (S/AC.26/Dec.25(1994))	S/AC.26/1994/3
E1(1) report	Report and recommendations made by the Panel of Commissioners appointed to review the Well Blowout Control Claim (the "WBC Claim") adopted in Governing Council decision 40 (S/AC.26/Dec.40(1996))	S/AC.26/1996/5/ Annex
E1(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of " E1" claims, adopted in Governing Council decision 72 (S/AC.26/Dec.72(1999))	S/AC.26/1999/13
E2(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of " E2" claims, adopted in Governing Council decision 53 (S/AC.26/Dec.53(1998))	S/AC.26/1998/7
E2(2) report	Report and recommendations made by the Panel of Commissioners concerning the second instalment of "E2" claims, adopted in Governing Council decision 65 (S/AC.26/Dec.65(1999))	S/AC.26/1999/6
E2(3) report	Report and recommendations made by the Panel of Commissioners concerning the third instalment of "E2" claims, adopted in Governing Council decision 82 (S/AC.26/Dec.82(1999))	S/AC.26/1999/22
E2(4) report	Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of "E2" claims, adopted in Governing Council decision 87 (S/AC.26/Dec.87(2000))	S/AC.26/2000/2
E3(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E3" claims, adopted in Governing Council decision 58 (S/AC.26/Dec.58(1998))	S/AC.26/1998/13
E4(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "E4" claims, adopted in Governing Council decision 63 (S/AC.26/Dec.63 (1999))	S/AC.26/1999/4
E4(5) report	Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of "E4" claims, adopted in Governing Council decision 92 (S/AC.26/Dec.92(2000))	S/AC.26/2000/7
F3(1) report	Report and recommendations made by the Panel of Commissioners concerning the first instalment of "F3" claims, adopted in Governing Council decision 84 (S/AC.26/Dec.84(1999))	S/AC.26/1999/24

Annex I

List of reasons stated in annexe III for denial in whole or part of the claimed amount

No.	Reason for denial or reduction of award	Explanation
1	"Arising prior to" exclusion	All or part of the claim is based on a debt or obligation of Iraq that arose prior to 2 August 1990. Accordingly, pursuant to Security Council resolution 687 (1991), the claim is outside the Commission's jurisdiction. (Paragraphs 22 to 25)
2	Claim preparation costs	The Governing Council will resolve the issue of claim preparation costs at a later date. (Paragraph 99)
3	Deduction for failure to mitigate	222. The claimant has not taken such measures as are reasonable in the circumstances to reduce or minimize the loss as required by paragraph 6 of Governing Council decision 8 and paragraph 9(iv) of decision 15. (Paragraphs 79 to 83)
4	Deduction for uninsured amount	The recommended amount is limited to the amount or proportion of the loss for which the claimant is liable under the policy. (Paragraphs 45 to 46)
5	Exchange rate adjustment	The exchange rate applicable at the date of compensable loss is different from that on which the amount claimed was based. (Paragraph 86)
6	Insufficient evidence of payment	There are evidentiary shortcomings in relation to payment by the claimant to its policyholder (or, where relevant, by a reinsurer to the claimant or by a retrocessionaire to a reinsurer). (Paragraphs 68 and 75)
7	Insufficient evidence of the policy	There are evidentiary shortcomings in relation to the existence of a valid insurance policy at the date of the underlying loss. (Paragraphs 68 and 76)
8	Insufficient evidence That the policy covered the underlying loss	There is insufficient evidence that the policy covered the underlying loss or the risk that eventuated. (Paragraphs 68 and 74)

Annex I

List of reasons stated in annexe III for denial in whole or part of the claimed amount

No.	Reason for denial or reduction of award	Explanation
9	Insufficient evidence of value	The claimant submitted insufficient evidence to prove all or part of the value of its claimed losses, as required by article 35 of the Rules. (Paragraphs 68 and 76)
10	Military operations	The claim relates to the costs of the Allied Coalition Forces, including those of military operations against Iraq, or the costs and expenses of entities that provided services to the Allied Coalition Forces. (Paragraph 28)
11	No standing to bring claim	The claimant submitted insufficient evidence to establish that the claimant has standing or is authorised to bring the claim on its own behalf or on behalf of a group of insurers. (Paragraphs 68 and 74)
12	Part or all of the loss is not direct	The type of loss, in whole or part, is not a direct loss within the meaning of resolution 687 (1991). (Paragraphs 15 to 20)
13	Part or all of the underlying loss is unsubstantiated	The claimant failed to submit documentation substantiating the underlying loss or, where documents were provided, these did not demonstrate the circumstances and amount of part or all of the underlying loss. (Paragraphs 68 and 74)
14	Reduction to avoid multiple recovery	Although the claim is eligible for compensation, an award has already been made for the same loss in another claim before the Commission. Accordingly, the amount of compensation awarded in the other claim has been deducted from the compensation calculated for the present claim, in keeping with Governing Council decision 13, para. 3. (Paragraphs 84 to 89)
15	Reduction to reflect actual value	The actual value of the interest insured, as established by the experts appointed by the Panel or by other means, is less that the agreed value paid by insurers. (Paragraphs 37 to 43)

Annex II

Recommended awards for the first instalment of "E/F" claims

No.	Country	UNCC Claim No.	Claimant	Total amount claimed			Decision of the Panel of Commissioners
				Amount claimed[a] in original currency		Total Amount claimed restated in USD	Total recommended in USD
1	Australia	4000039	Export Finance & Insurance Corporation	AUD USD	135,673[b] 179,640	290,393	62,673
2	Bahrain	4000079	Bahrain National Insurance Company	BHD	120,000	319,149	319,149
3	Belgium	4000194	Aviabel Compagnie Belge d'Assurances Aviation SA	USD	210,000	210,000	195,510
4	Denmark	4000065	Krigsforsikringen for Danske Skibe	USD	180,000,000	180,000,000	Nil
5	France	4001877	Assurances Generales de France	GBP FRF	47,876 456,223	178,051	118,820
6	France	4001878	GAN Incendie Accidents Compagnie Francaise	GBP FRF	47,876 456,223	178,051	118,820

[a] This amount is defined in footnote a/ to Annex I(1).

[b] The component parts of this claim actually total AUD 113,446 rather than the amount described in this Annex. The difference is due to the claimant's error in calculating the claimed amount.

Annex II
Recommended awards for the first instalment of "E/F" claims

No.	Country	UNCC Claim No.	Claimant	Total amount claimed			Decision of the Panel of Commissioners
				Amount claimed* in original currency		Total Amount claimed restated in USD	Total recommended in USD
7	France	4001879	Compagnie D'Assurances Maritimes Aeriennes et Terrestres (CAMAT)	GBP USD FRF	112,085 700,000 1,064,521	1,116,165	928,947
8	India	4000292	The National Insurance Company Limited	INR	3,031,606	171,986	79,219
9	India	4000772	The New India Assurance Co. Ltd	INR	643,758	36,521	Nil
10	India	4000773	The New India Assurance Co. Ltd	INR	136,400	7,738	Nil
11	India	4000774	The New India Assurance Co. Ltd	DM	24,867	15,920	3,577
12	India	4000775	The New India Assurance Co. Ltd	DM	16,759	10,729	7,714
13	India	4000776	The New India Assurance Co. Ltd	INR	134,246	7,616	3,418
14	India	4000777	The New India Assurance Co. Ltd	INR	141,617	8,034	3.606
15	India	4000778	The New India Assurance Co. Ltd	INR	134,246	7,616	3,418
16	India	4000779	The New India Assurance Co. Ltd	INR	141,000	7,999	Nil
17	India	4000780	The New India Assurance Co. Ltd	FRF	27,224	5,193	4,333
18	India	4000781	The New India Assurance Co. Ltd	INR	206,000	11,687	Nil
19	India	4000782	The New India Assurance Co. Ltd	INR	156,000	8,850	Nil

Annex II

Recommended awards for the first instalment of "E3/E" claims

No.	Country	UNCC Claim No.	Claimant	Total amount claimed			Decision of the Panel of Commissioners
				Amount claimed in original currency		Total Amount claimed restated in USD	Total recommended in USD
20	South Africa	4001711	Credit Guarantee Insurance Corporation of Africa Limited	USD	157,280,877	157,280,877	Nil
21	Spain	4001466	Commercial Union Assurance PLC	USD	84,800	84,800	Nil
22	Switzerland	4001528	European General Reinsurance Company	USD	4,959,349	4,959,349	Nil
23	United Kingdom	4001961	Hong Kong Export Credit Insurance Corporation	HKD	2,493,102	321,276	121,538
24	United Kingdom	4002127	Syndicate 488 at Lloyd's	USD	18,861,990	18,861,990	17,560,513
25	United Kingdom	4002218	Hellenic Mutual War Risks Association	USD	8,833,294	8,833,294	2,789,425
26	United Kingdom	4002225	Syndicate 724 at Lloyd's	USD	4,000,000	4,000,000	3,400,000
27	United Kingdom	4002266	The British Aviation Insurance Company Limited	GBP FRF	2,235,983 25,889,193	9,189,719	6,676,301
28	United Kingdom	4002271	Syndicate 10 at Lloyd's	USD	2,705,954	2,705,954	Nil

Annex II
Recommended awards for the first instalment of "E/F" claims

No.	Country	UNCC Claim No.	Claimant	Total amount claimed			Decision of the Panel of Commissioners
				Amount claimed[a] in original currency		Total Amount claimed restated in USD	Total recommended in USD
29	United Kingdom	4002277	Syndicate 662 at Lloyd's	GBP	1,085,697	2,064,063	1,438,914
30	United Kingdom	4002308	A R Mountain and Son Limited	GBP USD	57,675 426,264	535,912	445,204
31	United Kingdom	4002309	Eagle Star Reinsurance Co Ltd	USD	88,226	88,226	6,329
32	United States	4000590	American Cargo War Risk Reinsurance Exchange	USD	22,731	22,731	17,824
33	United States	4000598	Citicorp Marine Management Inc	USD	43,401	43,401	33,537
34	United States	40 7606	Great American Insurance Company	USD	25,586	25,586	17,203
35	United States	4000626	The St. Paul Fire & Marine Insurance Co. Ltd.	USD	45,334	45,334	45,334
36	United States	4002355	The Insurance Company of the State of Pennsylvania	USD	662,211	662,211	Nil
37	United States	4002488	American Life Insurance Company	USD	15,600	15,600	13,839

Annex II

Recommended awards for the first instalment of "E/F" claims

No.	Country	UNCC Claim No.	Claimant	Total amount claimed			Decision of the Panel of Commissioners
				Amount claimed* in original currency		Total Amount claimed restated in USD	Total recommended in USD
38	United States	4002502	Commercial Union Insurance Company	USD	5,545	5,545	3,574
39	United States	4002564	National Union Fire Insurance Company of Pittsburgh	USD	1,744,028	1,744,028	8,724
40	United States	4002566	New Hampshire Insurance Company/ American International Group Inc.	USD	3,250,258	3,250,258	53,402

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub claim No.1 (The Lincoln Electric Company (Australia) Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)[a]	Amount recommended (USD)	Comments[b]
Payment or relief to others	Contractual losses - export credit	1,342	Nil	Claim denied as part or all of the loss is not direct
Total		1,342	Nil	

[a] This amount is the amount upon which the Panel bases its review of the claim. It includes corrections of any arithmetical errors that were made in the statements of claim and any reductions to original or amended amounts by the claimants during the period of review of the claims. The "Amount claimed" includes specific amounts, where claimed, for interest and claim preparation costs, although no recommendations have been made by the Panel in this respect (see paragraphs 97 and 99). As the claimants are not permitted to introduce new claims after 1 January 1997 or to increase the amount claimed in response to article 34 notifications or procedural orders, or by way of unsolicited supplements submitted to the Commission after 11 May 1998, such increases are not included in the "Amount claimed" amounts listed in Annex III.

[b] These comments are defined in Annex I.

Annex III

Recommended awards for the first instalment of 'E/F' claims

Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub claim No.2 (Craig & Seeley Sales Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	31,033	Nil	Claim denied as part or all of the loss is not direct
Total		31,033	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub claim No.3 (Arrow Export Services Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	29,037	Nil	Claim denied as part or all of the loss is not direct
Total		29,037	Nil	

Annex III

Recommended awards for the first instalment of "E1" claims

Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub claim No. 4 (Chilton Thompson & Co Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	3,420	2,948	Claim adjusted for insufficient evidence of payment
Total		3,420	2,948	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub Claim No.5 (Chilton Thompson & Co Pty Ltd

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	3,049	Nil	Claim denied as part or all of the loss is not direct
Total		3,049	Nil	

Annex II

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub claim No.6 (Comgroup Supplies Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit (resale losses and resale expenses)	24,727	20,651	Claim adjusted for insufficient evidence of payment; part or all of the underlying loss is unsubstantiated (claim relating to resale expenses)
TOTAL		24,727	20,651	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub Claim No.7 (Sola Optical Australia Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	6,621	Nil	Claim denied as part or all of the loss is not direct
TOTAL		6,621	Nil	

Annex III

Recommended awards for the first instalment of "E" F3 claims
Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub claim No.8 (Sola Optical Australia Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	988	875	Claim adjusted for insufficient evidence of payment
TOTAL		988	875	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub claim No.9 (Sola Optical Australia Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	16,138	Nil	Claim denied as part or all of the loss is not direct
TOTAL		16,138	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub Claim No.10 (Lief International Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	29,462	Nil	Claim denied as part or all of the loss is not direct
TOTAL		29,462	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub Claim No.11 (Unilac Australia Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	110,470	38,199	Claim adjusted for insufficient evidence of payment
TOTAL		110,470	38,199	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub Claim No.12 (Goodman Fielder Foods Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	14,765	Nil	Claim denied as part or all of the loss is not direct
TOTAL		14,765	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Export Finance & Insurance Corporation

UNCC claim number: 4000039 - Sub Claim No.13 (Vantree Pty Ltd)

Submitting entity: Australia

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	1,198	Nil	Claim denied as part or all of the loss is not direct
TOTAL		1,198	Nil	

Annex III

Recommended awards for the first instalment of "E/P" claims

Reported by claimant name and category of loss

Claimant: Bahrain Insurance Company

UNCC claim number: 4000079

Submitting entity: Bahrain

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other tangible property - loss of vessel	319,149	319,149	
TOTAL		319,149	319,149	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Aviabel Compagnie Belge d'Assurances Aviation SA

UNCC claim number: 4000194

Submitting entity: Belgium

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other tangible property - loss of aircraft	210,000	195,310	Claim adjusted for insufficient evidence of payment: part or all of the underlying loss is unsubstantiated
TOTAL		210,000	195,310	

Annex II

Recommended awards for the first instalment of "E3" claims

Reported by claimant type and category of loss

Claimant: Krigsforsikringen for Danske Skibe

UNCC claim number: 4000065

Submitting entity: Denmark

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other tangible property – loss of vessel	180,000,000	Nil	Claim denied as part or all of the loss is not direct
TOTAL		180,000,000	Nil	

Annex II

Recommended awards for the first instalment of "E3" claims
Reported by claimant name and category of loss

Claimant: Aerospace Generale de France (AGF-AGF)

UNCC claim number: 4001A""

Submitting entity: France

Type of loss	Category of loss	Amount claimed (USD)	Amount (net) awarded (USD)	Comments
Payment or relief to others	Legal liabilities - British Airways passenger lawsuit			
	Payments to passengers	120,314	81,368	Claim adjusted as part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery
	Legal fees	10,000	10,000	Claim adjusted for insufficient evidence of payment; part or all of the loss is not direct
	Hotel accommodation	9,598	7,001	Exchange rate adjustment
	EPIC and OCIC expenses	8,541	1,189	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		148,453	119,558	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: GAN Incendie Accidents Compagnie Francaise

UNCC claim number: 4001878

Submitting entity: France

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - British Airways passenger losses:			
	Payments to passengers	120,924	83,068	Claim adjusted as part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery
	Legal fees	38,968	27,910	Claim adjusted for insufficient evidence of payment; part or all of the loss is not direct
	Hotel Accommodation	9,598	7,093	Exchange rate adjustment
	EPIC and OCIC expenses	8,561	1,149	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		178,051	118,820	

Claimant: Compagnie D'Assurances Maritimes Aeriennes et Terrestres CAMAT

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

CC claim number: 4001879

bmitting entity: France

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
ayment or relief to tners	Other tangible property - loss of aircraft	700,713	651,700	Claim adjusted as part or all of the underlying loss is unsubstantiated
ayment or relief to thers	Legal liabilities - British Airways passenger losses:			
	Payments to passengers	282,155	193,825	Claim adjusted as part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery
	Legal fees	90,926	64,190	Claim adjusted for insufficient evidence of payment; part or all of the loss is not direct
	Hotel accommodation	22,395	16,551	Exchange rate adjustment
	EPIC and OCIC expenses	19,975	2,681	Claim adjusted as part or all of the underlying loss is unsubstantiated
OTAL		1,116,164	928,947	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

aimant: National Insurance Company Limited

CC claim number: 4000292 - Sub claim No.1 (Lincon Leatherwear India)

bmitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
ayment or relief to hers	Contractual losses - transhipment	8,428	3,730	Claim adjusted as part or All of the underlying loss is unsubstantiated
OTAL		8,428	3,730	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

imant: National Insurance Company Limited

C claim number: 4000292 - Sub claim No.2 (Overseas Carpets Limited)

mitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
ment or relief to ers	Contractual losses - transhipment	51,852	25,675	Claim adjusted for insufficient evidence of the policy
AL		51,852	25,675	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

aimant: National Insurance Company Limited

CC claim number: 4000292 - Sub claim No.3 (Kashmir Arts)

omitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
yment or relief to hers	Contractual losses - transhipment	72,258	35,356	Claim adjusted for insufficient evidence of the policy
TAL		72,258	35,356	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: National Insurance Company Limited

UNCC claim number: 4000292 - Sub claim No.4 (Bhandari Hosiery Exports)

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	11,304	3,993	Claim adjusted for insufficient evidence of the policy; insufficient evidence of value
TOTAL		11,304	3,993	

Annex.III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: National Insurance Company Limited

UNCC claim number: 4000292 - Sub claim No.5 (Sarat Fabrics Limited)

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment to relief to others	Contractual losses - transhipment	7,017	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		7,017	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: National Insurance Company Limited

UNCC claim number: 4000292 - Sub claim No.6 (Kapoor Sons)

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	21,126	10,465	Claim adjusted for insufficient evidence of the policy
TOTAL		21,126	10,465	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000772

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	36,521	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		36,521	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000773

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	7,738	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		7,738	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000774

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	15,920	3,577	Claim adjusted for insufficient evidence of payment
TOTAL		15,920	3,577	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000775

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses -transhipment	10,729	7,714	Claim adjusted for insufficient evidence of the policy
TOTAL		10,729	7,714	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000776

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	7,616	3,418	Claim adjusted for insufficient evidence of the policy
TOTAL		7,616	3,418	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000777

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	8,034	3,606	Claim adjusted for insufficient evidence of the policy
TOTAL		8,034	3,606	

Annex III

Recommended awards for the first instalment of "E/P" claims

Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000778

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	7,616	3,418	Claim adjusted for insufficient evidence of the policy
TOTAL		7,616	3,418	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000779

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	7,999	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		7,999	Nil	

Annex III

Recommended awards for the first instalment of 'E3' claims

Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000780

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses transshipment			
	Loss of goods	5,096	4,333	Claim adjusted for insufficient evidence of the policy
	Agency fees and settlement costs	97	Nil	Claim denied as part or all of the loss is not direct
TOTAL		5,193	4,333	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The New India Assurance Co Ltd.

UNCC claim number: 4000781

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	11,687	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		11,687	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The New India Assurance Co. Ltd

UNCC claim number: 4000782

Submitting entity: India

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	8,850	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		8,850	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 1 (Baltac Inc.)

Submitting entity: South Africa

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	1,321,997	Nil	"Arising prior to" exclusion
TOTAL		1,321,997	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 2 (Baltac Inc.)

Submitting entity: South Africa

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	131,918,849	Nil	"Arising prior to" exclusion
TOTAL		131,918,849	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 3 (Baltac Inc.)

Submitting entity: South Africa

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	493,198	Nil	1st and 2nd shipments: "arising prior to" exclusion; 3rd shipment: part or all of the underlying loss is unsubstantiated
TOTAL		493,198	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 4 (Reunert Technology Systems (Pty) Ltd)

Submitting entity: South Africa

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	22,550,177	Nil	"Arising prior to" exclusion
TOTAL		22,550,177	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Credit Guarantee Insurance Corporation of Africa Limited

UNCC claim number: 4001711 - Sub-claim 5 (South African Co operative Citrus Exchange Ltd)

Submitting entity: South Africa

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	996,656	Nil	Part or all of the loss is not direct.
TOTAL		996,656	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Commercial Union Assurance PLC

UNCC claim number: 4001466

Submitting entity: Spain

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	84,800	Nil	Claim denied as no standing to bring claim
TOTAL		84,800	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: European General Reinsurance Company

UNCC claim number: 4001528

Submitting entity: Switzerland

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - employer's liability	4,959,349	Nil	Claim denied as insufficient evidence that the policy covered the underlying loss
TOTAL		4,959,349	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 – Sub claim No.1 (BRP Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	17,032	Nil	Claim denied as part or all of the loss is not direct
TOTAL		17,032	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.2 (R E Dietz Company Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	7,059	Nil	Claim denied as part or all of the loss is not direct
TOTAL		7,059	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.3 (Sing Fai Trading Company)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	12,081	3,605	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		12,081	3,605	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.4 (N L Merchandising Company Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	22,541	17,938	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		22,541	17,938	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.5 (Kar Lee Trading Company Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	11,588	8,652	Claim adjusted as part or all of the underlying loss is unsubstantiated; insufficient evidence of payment
TOTAL		11,588	8,652	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.6 (Kar Lee Trading Company Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	2,399	1,791	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		2,399	1,791	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.7 (Kar Lee Trading Company Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	134,090	79,686	Claim adjusted as part or all of the underlying loss is unsubstantiated (consignments 1-5); insufficient evidence that the policy covered the underlying loss (consignments 6 & 7)
TOTAL		134,090	79,686	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.8 (N L Merchandising Company Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses- export credit	40,593	8,076	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		40,593	8,076	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.9 (Stallion Safety Supply Company)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	2,400	1,790	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		2,400	1,790	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.10 (Kar Lee Trading Company)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	7,061	Nil	Claim denied as insufficient evidence that the policy covered the underlying loss
TOTAL		7,061	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.11 (Chandra Industries)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	32,217	Nil	Claim denied as insufficient evidence that the policy covered the underlying loss
TOTAL		32,217	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Hong Kong Export Credit Insurance Corporation

UNCC claim number: 4001961 - Sub claim No.12 (Chandra Industries)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - export credit	32,216	Nil	Claim denied as insufficient evidence that the policy covered the underlying loss
TOTAL		32,216	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Syndicate Number 488 at Lloyd's

UNCC claim number: 4002127

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other tangible property - loss of aircraft	18,861,990	17,560,513	Claim adjusted for insufficient evidence of payment; part or all of the underlying loss is unsubstantiated
TOTAL		18,861,990	17,560,513	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Hellenic Mutual War Risks Association (Bermuda) Limited

UNCC claim number: 4002218

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other tangible property - loss of vessel	4,865,000	2,246,750	Reduction to reflect actual value
Payment or relief to others	Legal liabilities - losses associated with loss of vessel:			
	Loss of use	1,000,430	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
	Running expenses	2,000,838	142,245	Part or all of the loss is not direct; part or all of the underlying loss is unsubstantiated
	Mitigation payments	958,371	400,430	Part or all of the loss is not direct; part or all of the underlying loss is unsubstantiated
TOTAL (net of claim preparation costs)		8,824,639	2,789,425	
Other losses	Claim preparation costs	8,655	N/A	Claim preparation costs

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Syndicate 724 at Lloyd's

UNCC claim number: 4002225

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other tangible property - loss of vessel	4,000,000	3,400,000	Claim adjusted for insufficient evidence of payment
TOTAL		4,000,000	3,400,000	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The British Aviation Insurance Company Limited

UNCC claim number: 4002266

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - British Airways passenger losses:			
	Payments to passengers	6,464,737	4,690,215	Claim adjusted as part or all of the underlying loss is unsubstantiated; reduction to avoid multiple recovery
	Legal fees	1,876,899	1,530,011	Claim adjusted for insufficient evidence of payment; part or all of the loss is not direct
	Hotel accommodation	448,264	392,488	Exchange rate adjustment
	EPIC and OCIC expenses	399,819	63,587	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		9,189,719	6,676,301	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Syndicate 10 at Lloyd's

UNCC claim number: 4002271

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses	2,705,954	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		2,705,954	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Syndicate 662 at Lloyd's

UNCC claim number: 4002277

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other tangible property - loss of vessel	2,064,024	1,438,914	Claim adjusted for insufficient evidence of payment
	Reinsurance commission	39	Nil	Claim denied as part or all of the loss is not direct
TOTAL		2,064,063	1,438,914	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: A R Mountain and Son Limited

UNCC claim number: 4002308

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - salvage fees	395,246	355,722	Claim adjusted for insufficient evidence of payment
Other Losses	Legal and investigation costs	118,803	89,482	Claim adjusted for insufficient evidence of payment
TOTAL (net of claim preparation costs)		514,049	445,204	
Other losses	Claim preparation costs	21,863	N/A	Claim preparation costs

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Eagle Star Reinsurance Co Ltd

UNCC claim number: 4002309 - Sub claim No.1 (Burton Son & Saunders Ltd)

Submitting entity: United Kingdom

Category of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	4,795	Nil	Claim denied as part or all of the loss is not direct
TOTAL		4,795	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Eagle Star Reinsurance Co Ltd

UNCC claim number: 4002309 - Sub claim No.2 (Great Universal Stores Merchandise Corporation Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	45,207	6,329	Claim adjusted as part or all of the underlying loss is unsubstantiated
	Loss adjusters' fees	224	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		45,431	6,329	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Eagle Star Reinsurance Co Ltd

UNCC claim number: 4002309 - Sub claim No.3 (K L Watch Company Ltd)

Submitting entity: United Kingdom

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	38,000	Nil	Claim denied as part or all of the loss is not direct
TOTAL		38,000	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: American Cargo War Risk Reinsurance Exchange

UNCC claim number: 4000590 - Sub claim No.1 (Laissez-Fair Inc.)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	18,331	14,998	Claim adjusted for insufficient evidence of payment
TOTAL		18,331	14,998	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: American Cargo War Risk Reinsurance Exchange

UNCC claim number: 4000590 - Sub Claim No.2 (Wheeler-Rex Manufacturing Co.)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	4,400	2,826	Claim adjusted for insufficient evidence of the policy; insufficient evidence of payment
TOTAL		4,400	2,826	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Citicorp Marine Management Inc.

UNCC claim number: 4000598

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	43,401	33,537	Claim adjusted for insufficient evidence of payment
TOTAL		43,401	33,537	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Great American Insurance Company

UNCC claim number: 4000606

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	25,586	17,203	Claim adjusted as part or all of the loss is not direct; deduction for uninsured amount
TOTAL		25,586	17,203	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The St. Paul Fire & Marine Insurance Co. Ltd.

UNCC claim number: 4000626

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	45,334	45,334	
TOTAL		45,334	45,334	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.1 (Dyncorp - Mr J Perdue)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	223. Legal liabilities - workers' compensation	15,232	Nil	Claim denied for military operations
TOTAL		15,232	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.2 (Dyncorp - Mr M Debenedetto)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	224. Legal liabilities - workers' compensation	6,655	Nil	Claim denied for military operations
TOTAL		6,655	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.3 (Dyncorp - Mr W Welch)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	225. Legal liabilities - workers' compensation	329,253	Nil	Claim denied for military operations
TOTAL		329,253	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.4 (Dyncorp - Mr C Bric)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	12,569	Nil	Claim denied for military operations
TOTAL		12,569	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.5 (Dyncorp - Mr S Huffman)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	226. Legal liabilities - workers' compensation	5,990	Nil	Claim denied for military operations
TOTAL		5,990	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.6 (Dyncorp - Mr C Sorrels)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	227. Legal liabilities - workers' compensation	28,834	Nil	Claim denied for military operations
TOTAL		28,834	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.7 (Bechtel Group Inc. – Mr L Waldon)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	375	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		375	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.8 (Bechtel Group Inc. - Mr D Morris)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	145,044	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		145,044	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.9 (Bechtel Group Inc. - Mr A Mason)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	1,946	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		1,946	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.10 (Bechtel Group Inc. - Mr D Forbes)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	11,265	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		11,265	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.11 (Bechtel Group Inc. - Mr I Mackenzie)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	50,000	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		50,000	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.12 (Bechtel Group Inc. - Mr R Emblings)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	25,000	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		25,000	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.13 (Marshall Coleman et al)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	5,048	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		5,048	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: The Insurance Company of the State of Pennsylvania

UNCC claim number: 4002355 - Sub claim No.14 (Science Application International Corporation - Mr S Saleh)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - workers' compensation	25,000	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		25,000	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: American Life Insurance Company

UNCC claim number: 4002488

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses	15,600	13,839	Claim adjusted as part or all of the loss is not direct
TOTAL		15,600	13,839	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: Commercial Union Insurance Company

UNCC claim number: 4002502 Sub claim No.1 (Khazindar, Khazindar Est. & Khazindar Distributing Est.)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	2,898	2,371	Claim adjusted for insufficient evidence of payment
TOTAL		2,898	2,371	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: Commercial Union Insurance Company

UNCC claim number: 4002502 Sub claim No.2 (Foster Needle Company Inc.)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - transhipment	2,647	1,203	Claim adjusted for insufficient evidence of payment; insufficient evidence of the policy.
TOTAL		2,647	1,203	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant base and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.1 (Ford Motor Companies and Subsidiaries)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses	102,787	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		102,787	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.2 (Litton Industries Inc.)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses	74,117	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		74,117	Nil	

Annex III

Recommended awards for the first instalment of 'E/F' claims

Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No. 3 (Lockheed Corporation)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses	71,545	Nil	Claim denied as part or all of the underlying loss is unsubstantiated; insufficient evidence that the policy covered the underlying loss
TOTAL		71,545	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.4 (ABB)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses	410,787	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		410,787	Nil	

Annex III

Recommended awards for the first instalment of "E3" claims

Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.5 (AECOM Technology Corporation)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses	760,000	Nil	Claim denied as part or all of the underlying loss is unsubstantiated
TOTAL		760,000	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.6 (AAI Corporation)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses:			
	Salary costs	34,896	8,724	Claim adjusted as part or all of the underlying loss is unsubstantiated
	Loss of vehicles	35,667	Nil	Claim denied as part or all of the loss is not direct
	Funds used by detainee	50,000	Nil	Claim denied as part or all of the loss is not direct
TOTAL		120,563	8,724	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: National Union Fire Insurance Company of Pittsburgh

UNCC claim number: 4002564 - Sub claim No.7 (Harris Corporation)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - wrongful calling of guarantee	204,230	Nil	Claim denied as part or all of the loss is not direct
TOTAL		204,230	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.1 (Van Oord International)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - frustration of contract	2,185,757	Nil	Claim denied as part or all of the loss is not direct
TOTAL		2,185,757	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.2 (Solvochem Holland NV)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - frustration of contract	297,652	Nil	"Arising prior to" exclusion (consignments 1-3); insufficient evidence of the policy (consignments 4 and 5)
TOTAL		297,652	Nil	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.3 (ICI Pharmaceuticals)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - frustration of contract	93,578	50,480	Claim adjusted for insufficient evidence of the policy
TOTAL		93,578	50,480	

Annex III

Recommended awards for the first instalment of 'E/F' claims

Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company; American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.4 (Gebrüder Fürer Kampff AG)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Contractual losses - frustration of contract	150,000	Nil	'Arising prior to' exclusion
TOTAL		150,000	Nil	

Annex III
Recommended awards for the first instalment of "E/F" claims
Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.5 (AFG plc)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Other losses	17,610	2,922	Claim adjusted as part or all of the underlying loss is unsubstantiated
TOTAL		17,610	2,922	

Annex III

Recommended awards for the first instalment of "E/F" claims

Reported by claimant name and category of loss

Claimant: New Hampshire Insurance Company/ American International Group Inc.

UNCC claim number: 4002566 - Sub claim No.6 (Kuwait Petroleum Corporation et al)

Submitting entity: United States of America

Type of loss	Category of loss	Amount claimed (USD)	Amount recommended (USD)	Comments
Payment or relief to others	Legal liabilities - employer's liability	505,661	Nil	Sub-claims 6(A) - 6(D), 6(F)-6(I) denied as part or all of the loss is not direct; sub-claim 6(E) denied as part or all of the underlying loss is unsubstantiated; sub-claim 6(J) denied for insufficient evidence of the policy
TOTAL		505,661	Nil	